

DEPARTMENTS OF LABOR, HEALTH AND HUMAN  
SERVICES, EDUCATION, AND RELATED AGENCIES  
APPROPRIATIONS FOR 1999

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HEARINGS  
BEFORE A  
SUBCOMMITTEE OF THE  
COMMITTEE ON APPROPRIATIONS  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED FIFTH CONGRESS  
SECOND SESSION

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SUBCOMMITTEE ON THE DEPARTMENTS OF LABOR, HEALTH AND  
HUMAN SERVICES, EDUCATION, AND RELATED AGENCIES

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and Francine Salvador, Subcommittee Staff

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## PART 1

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Thursday, February 26, 1998.

MINE SAFETY AND HEALTH ADMINISTRATION

WITNESSES

J. DAVITT McATEER, ASSISTANT SECRETARY FOR MINE SAFETY AND HEALTH  
EDWARD L. JACKSON, ACTING DIRECTOR, OFFICE OF BUDGET

OPENING STATEMENT

MR. PORTER. Continuing with the hearings for the U.S. Department of Labor, we're pleased to welcome J. Davitt McAteer, the Assistant Secretary for Mine Safety and Health.

Mr. McAteer, why don't you proceed with your statement, and then we'll go to questions.

MR. MCATEER. Thank you, Chairman Porter.

I'm pleased to appear before the committee to discuss MSHA's fiscal year 1997 budget request for \$211.1 million and 2,243 FTE. That represents a net increase of \$7.8 million and 57 FTE over the fiscal year 1998.

MSHA's primary mission has been to reduce illnesses and injuries and fatalities in the mining industries in this country. The budget that we have submitted, we believe, will enable us to concentrate on improving miner safety and health to fulfill the Secretary of Labor's strategic goal of fostering quality work places that are safe, healthy and fair.

Since the enactment of the Coal Mine Safety and Health Act of 1969, the number of fatal accidents in the mining industry has fallen from 400 to 500 a year in the 1960s to a low of 86 in 1996. Last year, a good year in coal mining, deaths fell to an all time low of 30. However, last year was not such a good year for the metal-nonmetal miners. Some 60 fatalities occurred in 1997, the highest number in 10 years, up from all time low of 40 in 1994.

MSHA is working hard to concentrate on fixing this trend and taking steps to reduce the number of fatalities that exist in the mines and the metal-nonmetal mining regions. We believe that there are several factors which have led to this increase: the increase in production in these mines, the increase in employment and the increase in the number of hours worked.

But while no single cause can be identified for the upsurge in metal-nonmetal fatalities, the appropriation rider that prohibits MSHA from enforcing the training requirements at more than

10,000 of our Nation's mines, we believe, is a significant contributing factor. Over the past two years, for example, exempted operations counted for 90 percent of the deaths at the surface metal-nonmetal mines, even though they account for less than two-thirds of the total employment hours.

More than 60 percent of the victims, many of them young workers with limited experience, have received little or no training. All miners must receive adequate training, so that they can recognize and avoid safety and health hazards. Allowing workers to die because they lack proper training is senseless and shameful.

Following up with a program begun in 1997, we will continue to address this safety problem. We are resolved to find the right mix of actions to bring down the number of mining fatalities. We have attempted to reallocate resources to put front line workers where they are most needed, and conduct special programs that focus on accidents which claim unusually high numbers of victims. Our new FTE request will be targeted to address root causes of accidents and injuries.

## HEALTH PROBLEMS

In the area of health, we have been working very hard in both the metal and nonmetal and coal sides of the house to address two major health problems. Deaths from occupational lung diseases, particularly pneumoconiosis or Black Lung, still result in a number of premature deaths of workers who have been in the industry for a long time and workers who have only recently entered the industry.

In addition, silicosis continues to be a serious problem for our miners. Proposing 40 additional FTE and \$2.7 million to expand the Federal dust sampling program for our Nation's mines is an effort to rid the industry once and for all of Black Lung and silicosis.

MSHA's budget for 1999 is geared to making progress in these areas that we believe are so important to the Nation's miners. We hope that we will be able to reduce the number of fatalities and improve the health of all miners in this country.

I thank you for the opportunity to appear here today and would be happy to answer any questions you might have.

[The information follows:]

DEPARTMENT OF LABOR

Statement by

J. Davitt McAteer

Assistant Secretary for Mine Safety and Health

on

Fiscal Year 1999 Request for  
Mine Safety and Health Administration

Mr. Chairman and Members of the Committee:

I am pleased to appear before you to discuss the fiscal year (FY) 1999 appropriation request for the Mine Safety and Health Administration (MSHA). MSHA is proposing a budget of \$211.1 million and 2,243 full-time equivalent (FTE), a net increase of \$7.8 million and 57 FTE over FY 1998, to support the Department of Labor's (DOL) strategic goal of fostering quality workplaces that are safe, healthy, and fair. MSHA's strategic goals – reducing injuries in the Nation's mines and reducing miners' overexposure to health hazards – are consistent with this important DOL goal and our responsibilities under the Federal Mine Safety and Health Act of 1977 (Mine Act). In FY 1999, MSHA has established seven performance goals that link directly to reducing injuries, illnesses, and fatalities in the mining industry. MSHA's FY 1999 budget request will enable the Agency to focus its resources on activities and initiatives designed to achieve these performance goals and improve miners' safety and health.

MSHA has developed a strategy that encompasses all of the tools provided by the Mine Act – inspections and investigations, as well as educational outreach and assistance programs. Our strategy also includes special emphasis initiatives designed to address persistent safety and health problems miners continue to encounter. Far too frequently, MSHA finds injuries and deaths caused by inattention to basic safety precautions such as establishing adequate roof and ground controls, maintaining machinery and equipment in safe operation condition, and recognizing the special safety needs surrounding the use of large mobile equipment in the mining environment. In the health arena, miners continue to experience occupationally-related hearing loss and develop diseases such as coal mine workers pneumoconiosis and silicosis, commonly referred to as black lung.

## FATALITIES

The Federal mine safety and health program clearly works. Since enactment of the Mine Act, the number of fatal accidents in the mining industry has fallen from annual averages of 200 in the 1970's, to a record low in 1996 of 86, only 39 in coal mines and 47 in metal and nonmetal mines. In 1997, occupationally-related deaths at coal mines fell to an all-time low of 30, surpassing the 1996 record. The two year total of 69 deaths demonstrates the success of the Mine Act. The 69 victims, however, also serve to remind us that we can never relax our vigilance. The mining environment is ever-changing and fraught with danger. Just last year in a 24 hour period, four miners in three separate accidents died from roof falls. Mine fires and explosions from the build-up of methane gas and accumulations of loose coal dust remains a continual concern requiring constant attention. In FY 1999, MSHA will continue to work together with all sectors of the mining community to prevent mining fatalities.

Unfortunately, 1997 saw an alarming increase in the number of fatal accidents the Nation's metal and nonmetal mines. MSHA's preliminary data indicate that there were 60 deaths at these operations, the highest year-end total in a decade. Several reasons offered for this increase include a rise in the production of basic

minerals such as stone, sand, and gravel an influx of newer and less workers, longer work hours to meet production demands, and increased reliance on contractors unfamiliar with the dangers on mining property.

While no single cause can be identified for the upsurge, I firmly believe the appropriation rider that prohibits MSHA from enforcing the statutory training requirements at more than 10,000 nonmetal mines is a serious contribution to the increase in fatal accidents. Over each of the past two years, exempted operations have accounted for 90 percent of the deaths at surface metal and nonmetal mines, even though they account for less than two-thirds of the total employment hours. In addition, more than 60 percent of the victims, many of them young workers with limited experience, had received little or no training. Just three weeks ago, I was contacted by the widow of a 23 year old sand and gravel miner. MSHA found that this young worker had not been trained. Now is the time to ensure that all miners receive the training they need so that they can recognize and avoid safety and health hazards. It is senseless and shameful to allow workers to die owing to a lack of proper training.

Throughout 1997, MSHA took several steps to address fatalities in metal and nonmetal mining. We engaged the commitment of industry, labor, and state mining association representatives to help us reverse the trend. In September, we conducted an unprecedented mine sweep of more than 9,000 metal and nonmetal mines during which MSHA personnel talked with more than 100,000 miners and supervisors about the fatalities and how to avoid future occurrences. MSHA also reallocated resources to put front-line workers where they are most needed and conducted special programs focusing on accidents that claim unusually high numbers of victims.

These efforts have not yet succeeded; therefore, in 1998 we are resolved to find the right mix of actions to drive down the number of fatalities. We are currently focusing our efforts in states where the most fatalities are occurring and at specific types of mining that appear to be more hazardous than others. Our goal to reduce the number of fatalities in the top three categories of accidents to below the

average number recorded for the previous five years should also help cut this upward trend.

## RESPIRABLE DUST PROGRAM

Health is another area of concern and MSHA's 1999 budget request demonstrates our strong commitment to protecting miners. We have established performance goals related to reducing miners' overexposure to respirable coal mine dust, noise, and silica, and are proposing 40 additional FTE and \$2.7 million to expand Federal dust sampling.

While improvements have been made in the health area, miners continue to be at risk of developing occupational lung. Currently, approximately 55 thousand former, miners are receiving compensation for 'Black Lung' at a total annual cost of over \$1.1 billion to the Federal government.

A major component of the Federal program to protect miners from the hazards associated with exposure to respirable coal mine dust and silica is the requirement that mine operators conduct bimonthly sampling for occupations with a high risk of exposure to excessive levels of respirable coal mine dust. There are indications, however, that operator samples may not always be representative of the every-day work environment. Concern over the effectiveness of the program has been raised by the National Code for Occupational Safety and Health (NIOSH) and a Federally-appointed advisory committee, comprised of members from industry, labor, academia, and government. The committee issued a report in early FY 1997 containing recommendations for more than 100 specific action items affecting every aspect of the Federal dust program.

In FY 1999, the additional resources requested for the dust program will further the implementation of the advisory committee recommendation and help achieve the performance goal of a five percent reduction in the percentage of respirable coal mine dust samples not meeting the Federal minimum standard. MSHA will focus on restoring confidence in the Federal program to prevent



occupationally-related lung diseases. One of the most important steps that we have taken is to ensure that MSHA takes respirable dust samples four times a year at each underground mine and twice annually at each surface mine. MSHA has held several seminars in the coal fields to discuss a number of health issues including the announced decision to base noncompliance determinations on the results of single full-shift dust samples taken by inspectors. This policy becomes effective in April and reflects recommendations of the advisory committee as well as as a joint MSHA-NIOSH finding on sampling strategies. It affects only the samples taken by MSHA's inspectors. It does not affect the operator sampling program. This policy is solely designed to minimize miners' continued exposure to excessive dust levels.

In FY 1999, MSHA will increase monitoring inspections at mines that have difficulty maintaining consistent compliance with dust standards or that submit samples that appear to be unrepresentative of the mine environment. These and other health spot inspections will focus on the maintenance and operation of required dust controls, the adequacy of on-shift examination of those controls by the operator, and the requirement for operators to collect representative dust samples. In addition, we will continue to provide educational and training assistance on effective dust controls.

Also during 1999, MSHA will complete a field evaluation, begun in FY 1998, of the continuous respirable dust monitor and develop a strategy for its use in the enforcement program. The continuous dust monitor is designed to provide miners and mine operators with a constant readout of dust levels in the workplace so that immediate collective action can be taken to prevent overexposure.

## HAZARD TARGETING

MSHA's FY 1999 request also enhances FY 1997 and FY 1998 efforts to determine the root causes of, and solutions to, persistent safety and health problems. An additional \$1.2 million and 16 FTE are proposed to target specific hazards through assistance-based programs. One such program we have piloted is

the Compliance Analyst Program (CAP). This program uses specially trained personnel to work cooperatively with the mining community, to identify those occupations and mining conditions that pose a high risk for accidents and injuries, and to implement preventive measures. Thus far, the program has focused on surface mine drilling and blasting operations, surface coal haulage, underground roof-bolting operations, mine ventilation, and underground longwall mining operations. To date, coal mine operators and miners have reacted positively to CAP, and advised us that they would like to see the existing program expanded.

In FY 1999, MSHA is proposing to place a safety and health specialist in each metal and nonmetal district to target the root causes of accidents and injuries, to increase the number of silica and noise samples taken, and to direct attention to high risk mining jobs, locations, and types of operations.

Since last year's national conference on silicosis prevention, MSHA has continued to conduct local workshops around the country to foster grassroots sharing of information and best practices to eliminate silicosis. One important tool we need to better determine the pervasiveness of this disease in mining is a more comprehensive database of miner illnesses. Accordingly, MSHA has offered since October 1997, a grace period for reporting of occupational illness cases – without risk of penalty. More than 1,300 cases of occupational illnesses, which had not been previously reported, have been submitted. A comprehensive and reliable database will provide valuable information for MSHA and the mining community to use in protecting miners from harmful exposures in the workplace.

#### INFORMATION ACCESS AND GPRA

MSHA is also requesting \$791,000 and 1 FTE in FY1999 to support the strategic management of the Agency and the information technology needs required for ensuring that our safety and health programs remain effective. In fiscal year 1999, MSHA will develop and implement cost accounting systems that are a needed component of measuring program performance required under the Government Performance and Results Act. Contractual support is also required to

make electronic information more readily available to both Agency employees and the public. Over the next 5 years, MSHA intends to consolidate its various information systems on a common platform, expand its existing Internet capability, and develop an Intranet capability. In the first year, FY 1999, the Agency is proposing to complete a requirements analysis and functional evaluation of its information systems and to take the first steps toward: improving mainframe data accessibility through the Internet, developing an electronic reading room, and implementing an automated document management system. Recently, MSHA began offering mine operators and independent contractors the option of electronically filing employment and coal production information with MSHA via the Internet. The Agency will continue to expand the use of electronic filing systems, and will eventually include a system for the electronic submission of accident, injury, and illness reports. These efforts will reduce the information collection burden on the mining industry and help ensure the timely flow of critical safety and health information.

Mr. Chairman, that concludes my prepared statement. I appreciate this opportunity to present MSHA's budget request for meeting our safety and health performance goals for FY 1999. I welcome any questions you have.

## MINE FATALITIES

MR. PORTER. Mr. McAteer, when you say coal mine deaths fell to a record low, are we talking about deaths per 1,000 workers, or are we talking about the absolute number?

MR. MCATEER. We're talking about the absolute number.

MR. PORTER. What about deaths per number of workers engaged?

MR. MCATEER. That number is at its all-time low as well.

MR. PORTER. It is?

MR. MCATEER. Yes, sir. Both the rate and the actual number, 30, are the lowest in recorded history in this country.

MR. PORTER. And what do you attribute that to?

MR. MCATEER. There are several factors. If we had the full answer to that question, we could apply it in other places quite readily. We know that education and training is a critical element,

that enforcement is a terribly important element, and that new technology is an element.

For example, we have a very high level of production in the coal industry, similar to the level of production in the metal-nonmetal industry. But we haven't had the increase in fatalities. In fact, we've had a decrease in fatalities in coal mining.

We attribute that to in part the technology that's in place now, and the fact that we've had a statutorily mandated enforcement program for all coal mines since 1969. I think those factors have come together to help us get there.

I want to say for a moment that in addition to what we do, this number is also driven by the people involved, the people who are mining the product. I say that from the standpoint of both the workers and the managers of these operations. We have had good cooperation from the time that I've been Assistant Secretary from both management and labor in the coal industry, as well as management and labor in the metal-nonmetal industry. So we have had excellent cooperation in terms of getting at and addressing particular problems.

In the last several years, in both coal and metal-nonmetal, we've had a sizable number of accidents with powered haulage equipment, primarily large trucks. For example, a large truck drives over a small truck, or a large truck drives over a person at a strip operation in large pits.

Working cooperatively with industry and labor, we implemented a new education and training outreach program, to talk with industry and labor to identify problems. Our philosophy is not a "gotcha" philosophy; we identify a problem; we develop materials and education and training on that problem. Then, we have an enforcement component, which says, we're going to come and enforce on this, because this is where the problem is.

In coal mining, our numbers in terms of powered haulage accidents have come down. In metal and nonmetal mining, albeit similar programs, in fact, mirror image programs, those numbers have not come down. I can't explain why.

MR. PORTER. Do you have a method of adjusting for major accidents? In other words, wouldn't a major accident on, let's say the coal side, where a number of people are killed, change your numbers dramatically for a single year, even though you could show a trend line that they were going down for other reasons?

MR. MCATEER. Yes, sir. We have not had a major accident in coal, or metal and nonmetal mining for a number of years. But the risk that we have in our business is that we can have, at any moment in time, an accident of large proportion.

We had, for example, a number of fires in the last two years, at underground coal mines in this

country. Some were in Illinois. We fortunately were able to put them out without loss of life or limb.

But can we adjust those numbers? I think you have to take the--two parts. One, it is the rate issue, and that is the number of people injured or killed per number of tons produced or number of hours worked, more likely. And secondly, you would just have to say, that is an unusual occurrence, and one that does not occur regularly, on an ordinary basis.

We have not had to make that adjustment in the last several years. We hope to not have to make that adjustment again.

### TRAINING RIDER

MR. PORTER. Now, you said in your oral testimony that, and in answer to the question, that you're not certain why there is a significant decrease in the record low for coal mine deaths. And on the other hand, deaths for metal and nonmetal mines were up significantly last year.

But you also said that a component of this could be the exempt operations where you aren't providing miner training. Let's discuss that for a minute.

This bill has for many years contained a prohibition on the expenditures of funds by your agency to enforce miner training provisions in the Mine Act with respect to certain kinds of surface mining operations. You're opposed to this prohibition.

If we eliminated--first of all, I'd like you to tell me why you think the provision got put in originally, because this is actually before my time and your time. Then I'd like to know why you oppose it, and then if we eliminated the provision from the bill, what steps would the agency take to develop reasonable regulations with respect to these very extensive statutory training requirements? How would you work with the mining industry to accommodate their concerns that these training requirements are particularly onerous and burdensome to them?

MR. MCATEER. Thank you, Mr. Chairman.

There are fewer and fewer things that occurred before my time, so I'm glad that there are a few----

MR. PORTER. Mine too.

MR. MCATEER [continuing]. Still outstanding. Your question goes to the rider and to our expenditure of funds to enforce the provisions of Section 115 of the Act. My understanding of the history of this particular provision is that its placement arose from concerns on the part of the

newly integrated metal-nonmetal mining community who were brought under the same enforcement provisions as the coal mining community. The 1977 Act modified the Coal Act of 1969 to include metal and nonmetal mining.

My understanding is that there was concern on the part of the mine operators that this would result, then, in application of requirements that were geared toward the coal mines in places where the risks, the hazards, the concerns, or the problems were different than had been addressed under the Coal Act. It was a concern at that time that these requirements would be restrictive and would constitute quite a stiff penalty on these metal and nonmetal operators.

The training rider has been in effect now some 20 years. We are opposed to it, and we think that it presents a significant problem to us. Because health and safety is an art, not a science, we are not able to pinpoint how much good education and training will do in preventing deaths of exempt metal and nonmetal mines. We do know that, as a general matter, training works and works effectively.

So our suggestion is that we would be able to work with the industry if we were to lift the rider, to adapt the requirements of Section 115. We've gained enough experience under the Mine Act to be able to address the concerns that were raised back in the 1977 to 1980 time period.

We also believe that with the number of young people coming onto these properties, the increase in production at these facilities, and the fact that the new miners are coming on from other types of work, really presents an opportunity to help these folks by ensuring they receive education and training.

There are some industry representatives and some companies within the metal and nonmetal industry who do adequate and good training. There are unfortunately some who do not. The removal of the rider would raise the bar for everyone in the industry, to bring them up to a common denominator and allow us to enforce that requirement.

We think that removal of the rider would improve markedly the numbers of accidents and injuries. I cannot speak to a number, but I can tell you that over a period of time, education and training indeed works. It works for all of us.

## TRAINING REGULATIONS

MR. PORTER. Answer for me how far you have gone within the terms of the prohibition. In other words, have you developed any proposals that might lead to regulations? Have you talked to the industry officials? Have you done anything in this area at all, and then I'd like to ask you

what you think reasonably we should allow you to do prior to issuing any regulations?

MR. MCATEER. Mr. Chairman, we have obviously abided by the rider and the prohibition. But we have shared our concerns with the associations and with the industry generally, and we have sat down with them and said, what are your problems with the particular set of regulations, and how might we address those problems either by policy or by regulation.

In addition, we've had conversations to try to pick out the best practices in this business. Are there companies that have developed good, strong education and training programs, that are using them, and can we model those for other folks, can we share that kind of information?

We have made information available on our internet site about what kinds of problems we're having, about surface haulage and other particular kinds of problems. We have pinpointed individual problems. But we can't be certain that that information is getting to the places where it's needed. We are in effect preaching to the converted, we believe. Those folks who are not using this information, are the ones that we need to get to. And those, I'm afraid, are the people that we are being limited from getting to because of the rider.

MR. PORTER. Do those tend to be the smaller operators?

MR. MCATEER. As a general matter, I think that's fair to say. These are some of the smaller operators, or some of the mid-size operators who have many items on their plate. The individual who's running the plant or running the facility frequently has a multitude of jobs.

This is not saying that they're not concerned about it, it's simply that they have many jobs and education and training becomes a lower priority or is dropped off the plate. We'd like to get education and training up to the front of this person's agenda.

MR. PORTER. I don't know the reaction of other members of the subcommittee, obviously we've run past the hour and we thank you for staying past the hour. But I'd be willing to see whatever materials you want to present to the subcommittee in this area that might make your case for lifting the prohibition. We'd be happy to look at those and see whether that makes sense in the current context.

[The information follows:]

#### Provisions of the Restrictive Language and Section 115 of the Mine Act

The Mine Safety and Health Administration (MSHA) is prohibited from expending or obligating funds to carry out section 115 of the Federal: Mine Safety and Health Act of 1977 or to carry out

that portion of section 104(g)(1) of such Act relating to the enforcement of any training requirements, with respect to shell dredging, or with respect to any sand, gravel, surface stone, surface clay, colloidal phosphate, or surface limestone mine as a result of language inserted into the Agency's FY 1980 Appropriations and continued each successive year.

Section 115 of the Mine Act set out for the first time in U.S. mine safety law specific provisions requiring that mine operators have a training program that contains at least the following elements:

- (1) new miners having no underground mining experience shall receive no less than 40 hours of training;
- (2) new miners having no surface mining experience shall receive no less than 24 hours of training;
- (3) all miners shall receive no less than 8 hours of refresher training; and
- (4) any miner who is reassigned to a new task in which he has had no previous work experience shall receive training.

Section 104(g)(1) of the Mine Act requires MSHA to withdraw an untrained miner from the worksite.

#### Basis of MSHA's Opposition to the Appropriations Language

MSHA has and continues to oppose the FY 1980 language because education and training is such an integral part of any program to prevent accidents, illnesses and injuries. The language, in effect, impedes MSHA's ability to fully protect the miners working at these operations and to carry out the mission and intent of the Mine Act; At a time when metal and nonmetal fatal accidents have risen to a level not seen in 10 years, the appropriations language restrains MSHA from evaluating and requiring compliance with the training rules that protect the men and women in the mining industry by providing them with basic information on how to avoid the safety and health hazards inherent in the mining environment.

Congress specifically included training provisions in the Mine Act because experience clearly indicated that miners were receiving either inadequate training or no training at all and that the lack of training leads to accidents. Safety and health professionals from all sectors of industry recognize and endorse training as a critical component of a successful safety and health program. Training-of new employees, refresher training, and new task training are of paramount



importance in order for workers to be properly informed of the hazards inherent in the workplace and, just as important, to be able to identify and avoid those hazards. The Agency's accident investigations demonstrate the consequences of working in the mining environment without proper training. For example in 1997:

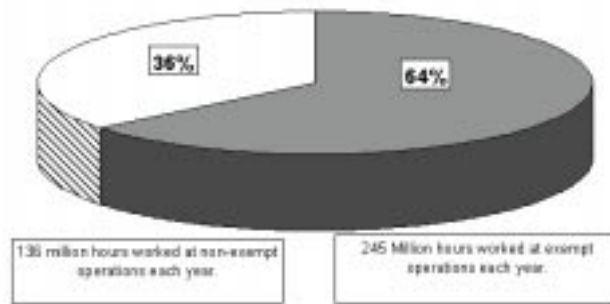
- A 19-year-old worker in Colorado was crushed to death while operating a loader. The victim had less than two years experience at the mine. A safety feature designed to prevent a crushing accident on the equipment was not working and the victim was not trained to conduct a required inspection which could have found the malfunction. The accident report concluded that the accident could have been avoided had the miner been trained in safe work rules and procedures when hired.
- A 49-year-old laborer with one month of experience at a crushed stone operation in Florida fell to his death after a handrail was removed several days before the accident. Had he received the required safety and health awareness training he might have been more aware of and avoided or corrected the hazards that contributed to the accident.
- A 36-year-old truck driver in Illinois was asphyxiated when he was engulfed by a stockpile of limestone. Training in basic safety precautions could have explained the dangers of shifting materials and may have prevented this accident.
- A 48-year-old machinist with less than 2 years experience at a limestone quarry in Texas was crushed to death when his right foot was pulled in between the hoist drums of an overhead trolley crane. The victim was performing a task that he had not previously done. Training prior to assigning an employee to a new task is one of the basic requirements of the Mine Act.
- A 37-year-old mechanic with three years mining experience was killed at a sand and gravel operation in Washington while repairing a conveyor. The machine on which he was working was not "locked-out" to prevent it from starting while he did the maintenance work. Had the victim and his co-workers been properly trained to follow basic safety procedures this accident could have been avoided.

Since fiscal year 1980, more than 600 miners have been killed in occupationally-related incidents at the mines where MSHA is prohibited from evaluating compliance with safety and health training. As indicated by the following charts, MSHA's data indicates that such exempted operations account for about 80 percent of the fatal accidents that have occurred at surface metal and nonmetal mines during the past 5 years while working just 64 percent of the hours. In the past 2 years (1996 and 1997), fatalities at these operations accounted for 90 percent of the deaths occurring at surface metal and nonmetal mines.



### Hours Worked at Surface Metal and Nonmetal Mines

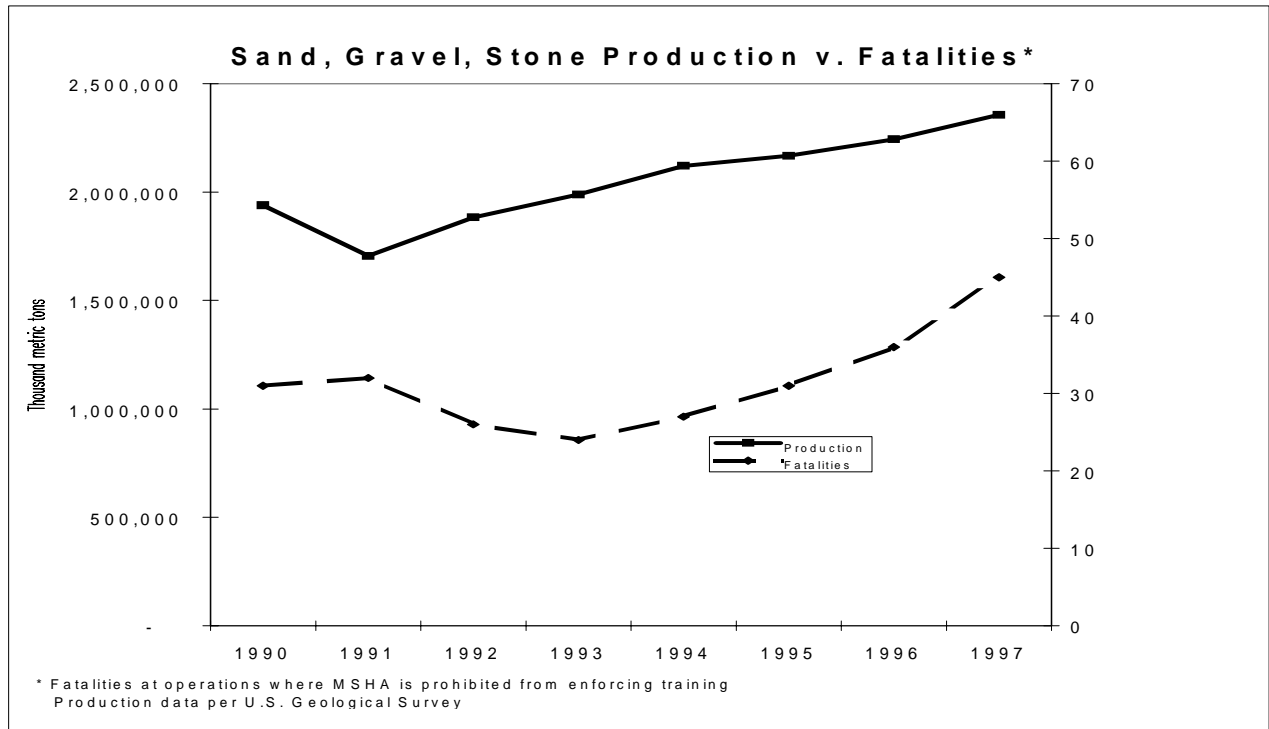
Almost two-thirds of mine employment occurs at operations at which MSHA is restrained from enforcing training regulations.



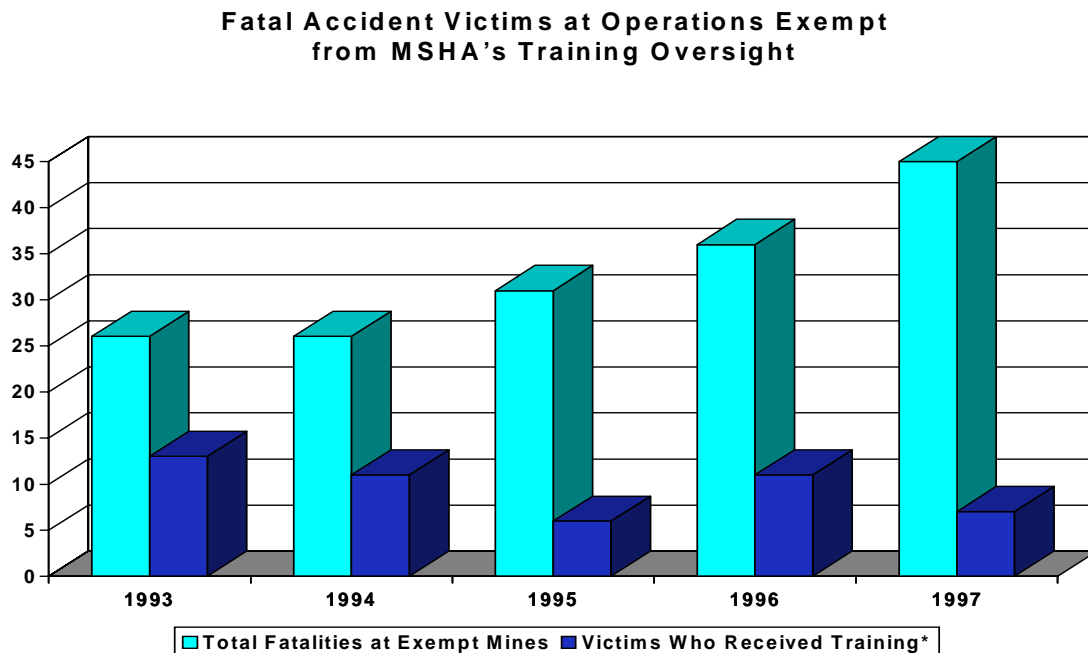
Sand and gravel and crushed stone make up the majority of the operations where MSHA is prohibited from enforcing the training requirements. These commodities are essential and are used in road building and repair projects, the housing industry, and in all major construction activities.

Production in the sand and gravel industry, in particular, increases with increased construction activity. There are indications that the recent rash of fatalities at the sand and gravel, surface stone, surface limestone and other mines are due to the length of hours worked, an influx of new inexperienced workers, lack of safety training, and violations of basic safety principles.

Weather conditions, particularly as a result of El Nino, have damaged and destroyed many homes, roads and bridges in California and other parts of the country. We anticipate the conditions will increase the demand for sand, gravel and stone. Production of these commodities is expected to substantially increase over the next 5 years to meet the demands prompted by the Inter-modal Surface Transportation Efficiency Act of 1997. We are concerned about the impact on the fatality rates. As indicated in the following chart, our experience has been that when production increase, accidents do as well.



MSHA does not assert that the ability to enforce the training requirements of the Mine Act and Title 30 CFR, Part 48 could have prevented all of the deaths that have occurred at the mines covered by the appropriations language. We know, however, that some of these accidents could have been prevented if the victim had received appropriate, basic safety training. Moreover, as indicated by the following bar graph, the number of persons killed who have received training is declining relative to the number of victims who were not trained in accordance with the Mine Act.



\*Victims who received safety and health training mandated by the Mine Act.

### Impact of the Elimination of the Appropriations Restriction

If the restriction on MSHA's ability to carry out Section 115 of the Mine Act and that portion of Section 104(g) (1) at the affected mines, were eliminated, the Agency is committed to a basic, common sense approach to enforcing the training requirements. The Agency is seeking to determine whether miners have been trained in basic safety and health precautions and specific task training to prevent injuries, illnesses, and deaths. MSHA is not interested in requirements that add unnecessary paperwork or administrative requirements.

MSHA and representatives of the National Stone Association (NSA) have met over the last several months to discuss the industry's concerns with the Part 48 training regulations. MSHA has encouraged NSA to continue to develop proposed language for possible training regulations that meets the needs of their members, and is committed to a continuing dialogue with NSA.

During the past 6 months, NSA has-outlined their Safety and Health Committee's concepts for a workable training program for the aggregates industry. MSHA agrees with many of these concepts. For example, MSHA's current Part 48 regulations permit mine operators to provide new, completely inexperienced workers with 8 hours of training if the remaining 16 hours are provided within 60 days - - one of the recommendations of the NSA's Safety and Health Committee. Similarly, under MSHA's Part 48 rules, the 8 hours of annual refresher training can be accomplished in 30 minute sessions.

In addition, administrative and paperwork requirements is another concerns of some in the affected industries. MSHA is sensitive to the concerns about administrative and paperwork requirements and is committed to an approach that provides workers with effective safety and health training and reduces unnecessary paperwork. For example, MSHA is currently prepared to ensure that mine operators have electronic access to model training plans available on the Internet. Providing flexibility in instructor qualification, as well as in the safety and health subjects addressed during the 8 hour annual refresher training, are also issues that MSHA is willing to continue to discuss with NSA.

The appropriations language restricts MSHA's ability to enforce the training provisions; mine operators are not relieved of their responsibilities to provide their workers with safety and health training. In fact, we know that many operators carry out effective training programs. However, we also know that some operators do not provide any training or inadequate training, thus placing miners at risk. Elimination of the restrictive language would ensure that all mine operators are on a level playing field in working to prevent accidents, injuries and illnesses.

If the language were eliminated or modified, MSHA is prepared to take all necessary measures to ensure

that all mine operators are advised of the change in law in a timely manner. We would request the assistance of representatives of industry, labor, State mining associations, and State mining agencies to assist in implementation. In addition, MSHA would make available its training materials and resources to the affected section of the nonmetal mining industry.

Retaining the Status Quo (the Existing Appropriations Language) impedes MSHA's Ability to Promote Miners' Safety and Health

Under the 1977 Mine Act, the worker protections afforded coal miners since 1970 were extended to the metal and nonmetal mining industry. These protections included a systematic approach to promoting safety and health in the mining industry which included a minimum number of complete annual inspections, mandatory safety and health standards, citations and penalties for violations found, and mandatory training for all miners. Prior to the 1977 Mine Act, the metal and nonmetal mining industry's safety and health regulations were largely advisory, and inspections and sanctions were minimal. The prohibition was an outgrowth of the concerns of the nonmetal mining industry about its inclusion under a single statute which had as its basis the Federal Coal Mine Health and Safety Act of 1969.

These industries now have had 20 years of experience under the Mine Act and MSHA's administration of the statute. More important, the members of the safety and health community agree that the dramatic improvements in miners' safety and health are due, in large part, to the Mine Act, and the commitment it requires of government, industry, and labor. We have seen the number of fatalities decline from an annual average of about 200 in the 1970's to less than 100 fatal accidents in 1997.

It is universally recognized that training saves lives and prevents injuries and illnesses. While the number of coal mining fatalities in 1997 dropped to 30, the number of metal and nonmetal fatal accidents rose to 60, the highest number in 10 years. The surface metal and nonmetal mining operations experienced 50 of the 60 fatal accidents, of which 45 or 90 percent occurred at mines where MSHA cannot enforce training. In 1997, 38 of the 45 victims at exempt mines had not received the safety and health training required by the Mine Act. Elimination of accidents and injuries will only occur if miners are fully aware of the hazards in the workplace and are effectively trained to avoid them.

The current language that prohibits the Agency from carrying out the training requirements of the Mine Act and Part 48 at shell dredging, sand, gravel, surface stone, surface clay, colloidal phosphate, and surface limestone mines should be eliminated. Elimination of the language in MSHA's appropriations would help to ensure that all miners have the safety and health training protections afforded under the Mine Act and MSHA's Part 40 regulations.

There have been concerns expressed that elimination of the restrictive language would lessen MSHA's commitment to considering changes to the regulations. To the contrary, the Agency is committed to improving the training provided to all miners under the Mine Act. MSHA recognizes that the Part 48 regulations are dated and need revision, and in fact, in its May 1997 semiannual Regulatory Agenda announced that the Agency is reviewing Part 48. Moreover, in the interim MSHA is revising its training policies to provide additional flexibility and reduce paperwork and administrative burdens. MSHA's objective is to develop training regulations and policies that recognize the changes that have occurred in the mining industry over the past 20 years and incorporate modern, effective training methods.

MR. MCATEER. Thank you, Mr. Chairman.

#### SIGNIFICANT AND SUBSTANTIAL DEFINITION

MR. PORTER. I would ask Mrs. Northup. to take the chair.

MRS. NORTHUP. [assuming chair]. Thank you, Mr. Chairman.

I have a couple of questions. First of all, I'm concerned about the change in definition of what constitutes a non-significant substantial violation. And I'm really concerned about you, about your organization bypassing the regulatory process.

I think I understand that the Secretary has asserted that you all have never adopted a definition. But it seemed to me that, I mean, first of all, the definition was promulgated by the Federal Mine Safety and Health Review Commission, and that you picked up the definition of what constitutes a non-significant and substantial violation in several of your regulations. You specifically adopted it and pointed to it.

Are you aware of where that exists in other regulations, that adoption of the definition?

MR. MCATEER. Mrs. Northup, the definition of significant and substantial has a long history, beginning in 1965, when it was used by the Congress to describe what they felt were five or six major areas that they wanted the agency to address -- explosions, floods, etc., the larger kinds of things.

MRS. NORTHUP. Right.

MR. MCATEER. When the Coal Mine Safety Act was modified, and amended in 1969, and again in 1977, the Congress gave direction to the agency as to what it was they believed was a significant and substantial violation. The Mine Safety and Health Review Commission has addressed it on a number of occasions.

On one occasion, and the occasion to which you are referring, they defined the test for what is a significant and substantial violation. It is a two-part test that the violation posed a risk that was reasonably likely to result in a reasonably serious illness or injury to an individual.

That test is in conflict with the legislative history and the language of the Act itself. What we have tried to do and what we're doing in the one individual case, and this matter is in litigation, is raise the fact that we do not believe the definition is consistent with the statutory provisions and the legislative history of the Act.

But in order not to get into a position where we have surprised people in the industry, we made a public pronouncement of our position and noted that this position represented a change in what the Secretary had acquiesced to, but not actually adopted some 16, 17 years ago.

I want to be in the forefront by saying, we want to get public involvement in this. To that end, we have asked for public comment from industry, labor, and individuals. And we have sent that policy interpretation, although we are not required to, up to the Hill here, so that there will be input from the Congress as well.

MRS. NORTHUP. Well, I guess I would disagree with you that it is subject to a rulemaking, the rulemaking process. First of all, the definition of what is not an S&S violation, significant and substantial, I thought was established by the Federal Mine Safety and Health Review Commission. That's where the language first appeared.

Now, I realize you're not bound by that. But that is an official interpretation of the law.

The fact is, you seem to bind yourself to it, or to accept it, in two very explicit rules that you adopted, one, in the regulation of 30 C.F.R. 100.4, and then again in May 21st, 1982 in the preamble of the final rule. And then you picked it up again in another Federal regulation, exactly the same language.

So it seems to me that while the secretary may have changed, and maybe what she wishes had been an acceptable definition, the fact is that in terms of consistency and legal standing, that that regulation and that definition had been adopted through the rulemaking process. And if it had, it seems to me that then you have to go through the rulemaking process to change it.

MR. MCATEER. Mrs. Northup, the position of the Secretary is that the Congress has dictated what the S&S should be. And that the Congress has given us guidance and direction.

MRS. NORTHUP. And when was that?

MR. MCATEER. In 1977.

MRS. NORTHUP. And then based on Congress' direction to you, the Mine Safety Commission adopted the definition.

MR. MCATEER. Right.

MRS. NORTHUP. And it was found to be in compliance. I mean, these are interpretive judgments. But Congress' opinion hasn't changed since 1977, is that right? We haven't given you any new direction?

MR. MCATEER. That's correct.

MRS. NORTHUP. So based on the previous direction, there was a rule, and it has stood and has been used through litigation for 16 years.



MR. MCATEER. Yes.

MRS. NORTHUP. Well, I hardly think you can say you've changed your rule because Congress gave you that direction. I think you have to say you changed your rule because you didn't want to proceed under that definition.

MR. MCATEER. The language to which we speak begins in the 1969 Act, that is to say, the interpretation of it begins in the 1969 Act. It was interpreted by the then Interior Board of Mine Operations Appeals, which was equivalent to or similar to the Commission.

That interpretation stood for a number of years as well. It was reinterpreted by the Commission some 16 or 17 years ago.

MRS. NORTHUP. After the law changed in 1977.

MR. MCATEER. Yes.

MRS. NORTHUP. Okay.

MR. MCATEER. There have been several interpretations. And in fact, when the law was changed in 1977, the Congress gave very specific language in the legislative history which said, we don't agree with the interpretation of the board. So there have been several different modifications over the period of time since the Act went into effect in 1969.

MRS. NORTHUP. But the law changed in 1977.

MR. MCATEER. Yes.

MRS. NORTHUP. There was a new definition established by the Commission.

MR. MCATEER. That's right.

MRS. NORTHUP. It was picked up in at least two places in the rulemaking by MSHA. It seems to me that if you plan to change that, you have to go through a rulemaking process.

MR. MCATEER. Madam Chair, I'm certain that if anybody in industry or labor would like to bring litigation, that they will have an opportunity to do that. We just don't believe that it is a rulemaking requirement.

#### COAL ENFORCEMENT INCREASE

MRS. NORTHUP. I'd like to ask you another question about your new 40 FTEs that you've requested, and for the coal enforcement program. Coal fatalities have reached an all time low. However, in other areas, fatalities have increased. And yet, you have asked for all of your increases to be in the full time equivalencies for coal enforcement program. Why is that?

MR. MCATEER. Let me explain first the use of the 40 FTEs for coal, and then answer the second part of your question, why is it not in the metal and nonmetal area. Those 40 FTEs are specifically requested to develop and deal with the dust problems that we have in underground coal mines and in coal mines generally.

You may recall, in 1994-1995, then Secretary of Labor Robert Reich empaneled an advisory committee on coal mine safety and health made up of representatives from both industry and labor, as well as from the academic community. That committee made recommendations on how to change the dust sampling procedures in the underground mines and in the surface mines of this country.

One of those recommendations is that the Mine Safety and Health Administration, take on responsibility for sampling dust in the mines, as opposed to having the operators take responsibility for compliance sampling. We think that that recommendation is sound.

The requirement to ask an operator or an employer to take samples of his work place for compliance purposes would be akin to asking you and me and the rest of the population here in the Nation's capital, or anywhere, for that matter, to, each time we exceeded the speed limit to pull over, fill out a ticket, and send it to the state police of your choice. Then they would send you back a ticket and a fine some two weeks later.

We don't think that system makes sense. We think that system needs to be changed. In order for us to do that we have embarked upon a program to one, look at how we're collecting dust samples, secondly, to do some pilot projects, to see whether or not we can take over compliance sampling from the operators.

This recommendation was, I might add, a unanimous recommendation by both the operators of the industry, the union representatives, as well as the academic community.

MRS. NORTHUP. Did they ask for the additional inspectors?

MR. MCATEER. Yes. They knew that there was going to be additional FTEs needed. That's why we have put in place this three year plan to improve our dust program. We've initiated pilot projects in your State of Kentucky as well as in other States. And we're trying to go through a systematic process to put ourselves in a position where we can, if possible take this over.

The Congress was generous to us last year, and allowed us to improve our FTE position somewhat. Now we're back to say this next round will put us even closer to being able to do that.

As to the question of why not have more FTE in the metal and nonmetal area, I think there are two reasons. One is that these budgets are developed ahead. And we have been struggling with the reasons for the increase in fatalities and what is needed to bring down those numbers.

Secondly, we're trying to use the resources that we have available currently and to fill all the FTE positions to put ourselves in a position to have full enforcement and full education and training in the metal and nonmetal area where we see the problem occurring. So we're very keen on addressing just what you've pointed out. That's our most recent problem.

The difficulty we have, as everybody else does, is you have a bit of lag time in your budget. One of the

things we've tried to do as an agency, however, is to be a little lighter on our feet, be able to move quickly.

When we did have this fatality increase in the last three years, we began to put more emphasis on our metal and nonmetal area. The beginning of last year, for example, we invited industry and labor to counsel with us on how we might address the problem. We've come up with a plan of action and have put that plan in place.

I wish I could tell you today, here, it's made a tremendous difference. No, it hasn't. The numbers still are pushing us. We still are not satisfied. Nor is industry nor labor.

But we think that by returning to the basics, by adding the emphasis that we have in all components, education, training, technical support and enforcement, we hope to be able to get at the problem.

MRS. NORTHUP. Thank you. That's all, and this subcommittee meeting is adjourned. Thank you very much for your time and for your explanations. I appreciate it.

[The following questions were submitted to be answered for the record:]

#### GOVERNMENT PERFORMANCE AND RESULTS ACT

Mr. Porter: Mr. McAteer, as you probably know by now, I have been asking all of your colleagues this week about the Government Performance and Results Act (GPRA). Government Accounting Office (GAO) testified recently here about the Department's initial implementation of the Results Act, and we discussed this with the Secretary when she was here. Can you tell us how you assess your agency's implementation of the Act so far? Are you satisfied with what you have done thus far?

Mr. McAteer: I believe MSHA has done a good job in implementing GPRA. Our Strategic Plan is well-focused on the primary mission of the Agency and the performance objectives reflect what we feel are our crucial results goals. As I travel throughout the mining community, I make sure that the groups I meet are told about MSHA's GPRA strategic goals. We have both the Strategic Plan and FY 99 Performance Plan on our Internet website. We held a GPRA and strategic planning workshop with State representatives at a recent State Grants meeting. Within the Agency, the goals of GPRA and the Strategic Plan have been presented at quarterly Coal and Metal and Nonmetal District Managers' Meetings and at a training session provided to headquarters managers representing each of our program areas. Each inspector detailed to headquarters under our Visiting Inspector Program meets with my GPRA staff.

Mr. Porter: How did you establish the performance measures that you have for FY99? Are they

somewhat arbitrary, or are they carefully thought out?

Mr. McAteer: The performance measures that MSHA established clearly target what we are in business to accomplish. During the development of our strategic plan, my senior executives, senior managers, and I worked through an iterative draft process setting down, discussing, and refining our approach to key safety and health issues before us. On the safety side, fatalities -- particularly in the haulage, roof and ground fall, and machinery categories -- were primary considerations for our efforts as well as reducing the overall nonfatal-days-lost injury rate. On the health side, dust, noise, and diesel, three significant health hazards, were the ones for which performance goals were set.

Mr. Porter: How do you plan to validate the performance measures that you have set and the data that you will collect?

Mr. McAteer: MSHA has a comprehensive set of databases that are already in place to capture what we need to check our GPRA scorecard. These databases are the Coal Safety and Health Management Information System, the Metal and Nonmetal Safety and Health Management Information System, and the Mine Accident, Injury, Illness, Employment, and Coal Production System. The Coal and Metal and Nonmetal management information systems capture data directly from MSHA mine inspector reports; the Mine Accident, Injury, Illness, Employment, and Coal Production System data are reported directly from mine operators in accordance with 30 CFR Part 50.

Mr. Porter: Is it your belief that GPRA will produce significant changes in the way your agency goes about its business? Will you operate in a different way?

Mr. McAteer: I do not envision radical changes to the way MSHA conducts its business. The Mine Act provides some well-defined parameters for our operation. However, GPRA is important because it helps us clarify and balance near-term with far-term initiatives. There are those things we must do in the short-term in accordance with the Mine Act as well as in quick response to problems and trends that appear. Through GPRA, we have been able to put in writing and promote to our workforce and constituents our look to the future and our focus on eliminating the workplace hazards that endanger the safety and health of miners.

## INJURY AND FATALITY DATA

Mr. Porter: We see that coal mine deaths fell to a record low for the second consecutive year in 1997.

Are conditions in our coal mines becoming significantly safer for the miner? And, if they are, to what do you attribute that?

Mr. McAteer: Coal mine fatalities have been at record lows for two years, but it is important to note that year-to-year figures are highly variable. It is more significant that the longer term trend in fatalities also has been down. We do believe that coal mines are becoming safer for the miner, and this can be attributed to a number of factors. Technological advances such as remotely controlled continuous mining machines, improved longwall mining systems and atmospheric monitoring systems have helped to create a safer working environment. Due to comprehensive training programs and focused health and safety initiatives, the level of the coal miners' awareness of hazardous conditions has significantly increased. MSHA continues to conduct its mandatory inspections at surface and underground mines while emphasizing high risk areas. Training has improved both for the miner and for coal mine inspectors. The Agency has conducted special emphasis programs to target specific problem areas. For example, in 1995 an alarming trend in surface haulage accidents developed. With cooperation from industry and labor groups, this trend was reversed in 1996. In 1997, MSHA responded to an increasing trend in roof fall fatalities by rapidly redirecting its resources to the problem.

Mr. Porter: On the other hand, deaths in metal and nonmetal mines were up significantly in 1997. Why do we have the opposite situation in metal and nonmetal mines?

Mr. McAteer: The number of deaths in the metal and nonmetal mining industry has been increasing in the last several years. Last year there were 60 deaths at metal and nonmetal mines, the highest number in this segment of the mining industry in the last decade. A number of factors may be contributing to this increase. These include: an increase in production of basic minerals such as crushed stone and sand and gravel (aggregates); an influx of inexperienced and less trained workers; longer work hours to meet production demands; and an increased reliance on contractors on mine property.

In 1997, total production of crushed stone was the highest ever recorded. The production of construction sand and gravel was also the highest ever recorded. Aggregates production increased approximately 5 percent in 1997 from 1996, a consistent trend during each of the last five years. Correspondingly, the number of fatalities in this segment of the industry has also increased.

The metal and nonmetal mining industry has experienced an influx of inexperienced and less trained workers. The average years of experience for a miner has been decreasing. During the last five years, the number of fatally injured miners at surface mines exempt from MSHA's enforcement of the training

requirements mandated by the Mine Act has steadily increased from 24 to 45 last year. Fewer and fewer victims were trained. Last year, 38 of the 45 fatality victims at the exempt mines had not received the safety and health awareness training that is required by the Act. This is a disturbing trend that we are working to address.

Many of the miners at metal and nonmetal mines are working longer hours. This is probably true for workers in other industries. However, a miner must pay much closer attention to safety, because worker fatigue can result in a serious accident or fatality in the ever changing physical work environment of a mine. Fatigue is less critical for someone working in an office building. MSHA will continue its efforts to emphasize to the mining community the need for increased safety awareness during times of increased production and longer work hours.

The last factor mentioned that may be contributing to the rise in fatalities is the increased reliance on contractors by mine operators. In 1996, 12 of the 47 accident victims at metal and nonmetal mines were contractor employees. Last year, 21 of the 60 accident victims were contractor employees. MSHA inspections will continue to focus on contractor activities on mine property.

MSHA has been addressing these concerns in a number of ways, and we will continue to target our resources to increase safety awareness and address conditions that contribute to fatal accidents, such as focusing inspections on trucks, loaders and conveyors and alerting miners to haulage hazards. Haulage equipment accidents have been one of the most frequent causes of fatalities at metal and nonmetal mines. MSHA will also continue to meet with representatives of industry and labor to review accident information and work together to determine key factors involved in accidents so that preventable accidents can be avoided. Finally, we are emphasizing to the mining community the importance of the use of basic safety equipment, such as seat belts, safety lines, and life jackets, which could save many lives if properly used.

Mr. Porter: Would you say that working conditions are worsening in these kinds of mines? And, if so, why?

Mr. McAteer: Since 1978, when regulation of the metal and nonmetal mining industry under the Mine Act began, safety and health conditions in this sector of the mining industry have improved greatly. In the 1990's, however, this progress has slowed. Overall, conditions do not appear to be worsening at these operations, although some mine operators continue to skirt their responsibility to ensure a safe and healthful workplace for their employees.

To reestablish the historical downward trend in mining accidents, MSHA has taken a comprehensive approach, engaging industry and labor, targeting the hazards causing accidents, and widely disseminating accident prevention information. Over the past two years, we have met face-to-face with industry and labor representatives to solicit their input about the causes of fatal accidents in metal and nonmetal mines. With this information and our experience in the field, we have fashioned a number of initiatives, focusing on discrete risks to miners. For example, large mobile haulage equipment has been persistently involved in 25 percent or more of the fatal accidents. We alerted the industry to this trend and highlighted the safety measures necessary to prevent such accidents. Following a series of MSHA-sponsored training seminars across the country that addressed the hazards of haulage equipment, we directed special attention to this type of equipment during our regular inspections.

During a two-week period last fall, MSHA paused in its regular inspection activities and dedicated all available resources to an unprecedented effort to speak directly with miners, mine supervisors, and mine managers about the causes of accidents in the metal and nonmetal sector. Our inspectors and other staff visited more than 9,000 operations, coming into direct contact with some 100,000 industry workers, while sharing accident data and prevention tips.

In 1999, we will continue to concentrate our attention on the areas that demand it, such as the use of basic safety equipment like seat belts, safety lines, and life jackets, and the safety of independent contractor workers.

Mr. Porter: Are most of these fatalities occurring in sand and gravel mines? If so, tell us why these kinds of mines are significantly more dangerous than other kinds.

Mr. McAteer: Sand and gravel operations, together with quarries, experienced a significant number of fatal accidents last year. In 1997, 42 of the 60 fatalities in metal and nonmetal mines occurred at sand, gravel, and stone operations. Nine thousand of the 11,000 metal and nonmetal mines under MSHA's jurisdiction are sand and gravel operations. There is no reason why these operations should present greater hazards to miners than other types of mining operations, which have experienced fewer fatalities. The equipment used at these operations does not present different hazards, and the mining methods employed create no special risks. However, there are certain factors that may explain why the number of fatal accidents has been so high at sand and gravel operations.

First, sand and gravel producers are typically very small operations, with only a handful of employees. Many of these operations therefore have limited resources to devote to a full time safety and health

program, and as a result, miner safety and health training may not be a priority. Additionally, employees at these operations usually do not perform one specific job or operate only one type of equipment, but rotate among several different tasks at the operation. Effective safety training is particularly essential at these types of operations.

Notably and unfortunately, the appropriations rider prohibits MSHA from enforcing miner training requirements at these operations. MSHA inspectors cannot ascertain whether miners have received the training appropriate for new miners, annual refresher training, and task training for miners assigned new work. I am convinced that MSHA's inability to enforce safety training requirements at these operations has a significant negative impact on miner safety, and that many miners are not receiving the training that they need.

### MINE SAFETY AND HEALTH ACADEMY

Mr. Porter: You operate the Mine Health and Safety Academy in West Virginia. To what extent are you providing training for the industry itself?

Mr. McAteer: The first responsibility of the National Mine Health and Safety Academy is to train Federal mine inspectors. The Academy also provides professional education and training services and consultation to MSHA employees and members of the mining community. During fiscal year 1997, the Academy conducted 65,198 hours of training for 6,388 students. These numbers include only training provided for the industry itself, and exclude State and Federal inspectors' training.

Mr. Porter: How much, if any, training are you providing to the surface mining industry at the Academy?

Mr. McAteer: The Academy is providing training to the surface mining industry. In fiscal year 1997, the Academy conducted 16,842 hours of training for 3,578 surface mining industry students.

This total includes approximately 2,800 miners who received informal on-the-job hazard training, representing around 600 student days and 4,200 student hours. This number is also reported in the total number of Academy students.

Mr. Porter: What is the annual budget of the Academy?



Mr. McAteer: The Academy's annual budget is \$7,285,000 for fiscal year 1998, and this includes salaries and operating expenses.

Mr. Porter: How much does the Academy collect annually in fees from tuition, sales of training materials, etc.?

Mr. McAteer: For fiscal year 1997, the Academy collected \$320,676. This is from a total of \$240,876 for tuition and lodging, and \$79,800 for sales of training materials. Based on past data, we are expecting to collect approximately \$300,000 in tuition, lodging and sales of training materials for fiscal year 1998. We anticipate this amount would increase with the use of different marketing strategies.

Mr. Porter: How is that money used currently, or does it just revert to the Treasury?

Mr. McAteer: All the money currently collected reverts to the General Funds of the Treasury.

Mr. Porter: Your '99 budget proposes new appropriations language what would permit you to use up to \$750,000 of collections made by the Academy for education and training activities. Why is this language necessary, and what kinds of activities would you carry out with these funds?

Mr. McAteer: This language is necessary to ensure that MSHA has the ability to quickly and effectively respond to mine safety and health training needs. We believe training is a key element in the prevention of accidents, injuries, and illnesses. Our educational outreach efforts are among the first steps we take in addressing serious safety and health problems, and these efforts have been well-received by the mining community. As the demand for quality, easy to access training materials increases, MSHA must have the resources to fulfill the need. Authorization in our appropriation language to retain the collected fees will:

- permit the more rapid development of innovative training materials, taking advantage of new instructional technologies. Because the mining environment changes rapidly with today's technology and competitive economy, new and innovative education and training methods are needed to protect miners in the workplace.

- extend the Academy's ability to create and distribute mine safety and health training materials such as videos, technical information materials, and courses that our stakeholders and clients have requested from MSHA. Additional monies will be needed to accommodate this growing demand.

- provide resources to increase the number of mining engineering and industrial hygiene students who come to the Academy for special classes.

- speed up retrospective conversion of the MSHA library catalog in progress. To complete the project, the library needs to contract skilled technicians to complete the inventory and index the materials.

- speed up processing of archival materials and improve automated access to training materials.

The metal and nonmetal mining industry stakeholders and customers have stated that they are expanding production to support the national economy. Education and training are key components in the Agency's accident prevention program for these mines.

Stakeholders and customers in the coal mining industry have stated that many of their experienced miners are reaching retirement age. These miners, as they retire, will be replaced with new inexperienced workers, who will require extensive health and safety training.

## COAL MINING INDUSTRY

Mr. Porter: How much coal is currently being mined annually in this country, and how does that compare with five years ago?

Mr. McAteer: During 1997, 1,087 million tons of coal were mined in the United States. In 1992, 989 million tons were mined. This reflects about a 10% or 98 million ton increase over the five-year period.

Mr. Porter: To what extent has the size of the coal mining workforce declined over the past five years or so?

Mr. McAteer: In 1992, there were approximately 153,000 coal miners. In 1997, the number had dropped to about 109,000. This represents about a 29% decrease in the number of miners over the five-year period.

On the horizon in coal mines, the workforce is aging and more new miners will be hired (with less experience).

Mr. Porter: We understand that the number of active coal mines has been going down in recent years. Roughly how many are active now, and give us a comparison with five years ago?

Mr. McAteer: There were 2,758 coal mines in the U.S. in 1997. In 1992, there were 4,038. This is a decline of 1,280 mines, or 32% over this time period.

Mr. Porter: Can we expect the number of coal mines to continue to decline?

Mr. McAteer: The coal mining industry continues to increase the use of mechanization through new mining technologies. This has resulted in fewer coal mines and miners while at the same time increased coal production. We can expect this trend to continue in the future.

Mr. Porter: We note that your FY99 budget, however, proposes a significant staffing increase in the coal mine enforcement activity. Does this square with the declining number of coal mines, a decreasing coal workforce and a significant decrease in coal fatalities in recent years?

Mr. McAteer: There has been a decrease in the number of coal mines and miners in recent years. And yet while 30 coal fatalities in 1997 was a record low, each of these victims reminds us that we can never relax our vigilance. MSHA remains dedicated to continued improvements. The coal mine environment is constantly changing, creating new hazards as old ones are found and corrected. Frequent inspections are necessary under these conditions. Technological advances and increased production in the mining industry also create new hazards. MSHA also needs these resources to continue successful special emphasis programs such as the Compliance Analyst Program (CAP), the Small Mines Initiative, and sweeps focusing on specific hazards such as the Roof Control Sweep.

Miners' health is another area of concern. MSHA's 1999 budget request demonstrates our strong commitment to protecting miners against health hazards as well as safety hazards. We have established performance goals related to reducing miners' overexposure to respirable coal mine dust, noise, and silica, and are proposing 40 additional FTE and \$2.7 million to expand Federal dust sampling.

Improvements have been made in the health area, but miners continue to be at risk of developing debilitating and potentially fatal occupational lung diseases such as "black lung" and silicosis. Nearly 3,000 cases of black lung have been reported to MSHA by coal mine operators and contractors since 1990. Currently, approximately 55,000 former miners are receiving compensation for black lung at a total annual cost of over \$1.1 billion to the Federal government. According to a 1989 National Institute for Occupational Safety and Health (NIOSH) study, coal miner autopsy data indicated a 12.5 percent rate of silicosis among coal face workers and 6.4 percent for surface miners at underground coal mines. Results of more recent health screening of surface coal miners show that approximately 4 to 7 percent of

the miners examined had silicosis.

A major component of the Federal statutory program is the requirement that mine operators conduct bimonthly sampling for excessive levels of respirable coal mine dust. There are indications, however, that operator samples may not always be representative of the everyday work environment. Concern over the effectiveness of the existing program has been raised by NIOSH and a Federally-appointed Advisory Committee. The Advisory Committee issued a report in early FY 1997 containing recommendations for more than 100 specific action items affecting every aspect of the Federal dust program.

In FY 1999, the additional resources requested for the dust program will further the implementation of the Advisory Committee's recommendations and help achieve the performance goal of a 5 percent reduction in the percentage of respirable coal mine dust samples not meeting the Federal minimum standard. MSHA will focus on restoring confidence in the Federal program to prevent occupationally-related lung diseases. MSHA is moving to take respirable dust samples four times a year at each underground mine and twice a year at each surface mine. MSHA has held several seminars in the coal fields to discuss health issues including the announced decision to base noncompliance determinations on the results of single full-shift dust samples taken by inspectors. This policy becomes effective in April, and it affects only the samples taken by MSHA's inspectors. It does not affect the operator sampling program. This policy is designed to minimize miners' continued exposure to excessive dust levels.

MSHA will also increase monitoring inspections at mines that have difficulty maintaining consistent compliance with dust standards or that submit samples that appear to be unrepresentative of the mine environment. These and other health spot inspections will focus on the maintenance and operation of required dust controls, the adequacy of on-shift examination of those controls by the operator, and the requirement for operators to collect representative dust samples. In addition, we will continue to provide educational and training assistance on effective dust controls.

Also during 1999, MSHA will complete a field evaluation, begun in FY 1998, of the continuous machine mounted respirable dust monitor and we are in the process of developing a personal continuous monitor. These continuous dust monitors are designed to provide miners and mine operators with a constant readout of dust levels in the workplace so that immediate corrective action can be taken to prevent overexposure.

## METAL/NONMETAL FATALITIES

Mr. Porter: On the other hand, you say that fatalities are up in the metal and nonmetal mining industry and that you are very concerned about it. Your '99 budget does not seem to reflect that concern. How do you explain that apparent disparity between the coal increase and the metal and nonmetal increase?

Mr. McAteer: The number of deaths in metal/nonmetal mining has been increasing in recent years. Initially it might appear that budget distribution is not optimal, given this recent upsurge of fatalities. However, before distributing funds into major programs to attack this problem, we need to analyze root causes of the fatality increase to accurately determine what resources are necessary. There are a number of factors in the metal-nonmetal industry which may be contributing to the increase in fatalities. An industry trend of increased production of basic minerals correlates with an influx of inexperienced and less trained employees, who are working longer hours to meet production demands. In recent years, we have found a significant increase in the number of fatalities among miners who worked at mines exempt from MSHA's enforcement of the training requirements mandated by the Mine Act. The industry has also had an increased reliance on contractors on mine property.

Currently we are taking a comprehensive approach to the metal/nonmetal fatality increase, and focusing on the areas that demand increased attention, such as safety awareness during times of increased production. As stated in our performance plan, MSHA will focus on those accidents that claim a disproportionate number of lives. The powered haulage sweep focused on inspection of haulage equipment and roadways, and training miners about haulage hazards, including the most common causes of death, as well as unsafe conditions and behaviors. MSHA inspectors have been meeting with the industry to review fatalities and causes. MSHA has marshaled resources from throughout the Agency to assist in curtailing the upward trend, and has sent MSHA enforcement, training, and technical personnel to areas with high fatality rates. We have sent letters to mine operators, and publicized fatalities. The fatality reduction sweep involved presentations and talks with 9,000 operations and 100,000 miners, and distribution of stickers, training materials, brochures, and pamphlets. A back to basics letter was sent to all mine operators and contractors, and focused on the higher negligence regarding the use of seat belts, safety lines, and life jackets.

Much of the coal funding increase specifically concerns the area of health, as MSHA is currently strengthening the respirable dust program, which was recommended by the Advisory Committee appointed by the Secretary of Labor. This program involves a budget increase of 40 FTE and \$2.7 million in FY 1999.

Mr. Porter: What other steps is the agency taking, or planning to take, to address the increase in metal and nonmetal fatalities?

Mr. McAteer: MSHA is planning to continue initiatives undertaken to address conditions and practices that present hazards to miners. These initiatives include alerts to the mining industry that improved compliance at mines would be expected and stepped-up enforcement actions would be taken where appropriate, particularly with respect to basic safety violations and known safety and health problem areas. Tailored inspection programs have been initiated in each district. Attention is being focused on tasks and circumstances which have involved fatal accidents to ensure mine operators are devoting appropriate resources to miner safety. Inspection personnel have been focusing on four key States in which mining fatalities occurred most frequently in 1997: California, Texas, Nevada, and Florida.

Accident and injury prevention is an ongoing process that must keep pace with rapidly changing workplace conditions and practices. MSHA will continue to evaluate and develop profiles of accident and injury experience at our Nation's mines in order to be able to respond effectively to those circumstances that present the greatest hazards to miners. This includes evaluation of haulage systems and road construction at selected operations. Among other things, MSHA will continue to work with the mining community to stop accidents, direct attention to identification of safe practices, and perform follow-up inspections.

#### MINE DUST PROBLEM

Mr. Porter: How are dust levels monitored in underground mines currently?

Mr. McAteer: The current system for monitoring miners' exposure to respirable coal dust includes monitoring by both mine operators and MSHA. Mine operators collect five samples every bimonthly period on occupations that have a high risk of overexposure to respirable coal dust. MSHA inspectors historically have collected one set of samples from each mining unit annually. All samples are analyzed by MSHA to determine compliance with the current permissible exposure level. Both mine operators and labor agree that this system is not working and should be changed.

Mr. Porter: To what extent do you plan to change the current methods of monitoring dust levels?

Mr. McAteer: MSHA is committed to improving the system and methods of protecting miners from over-exposure to respirable coal dust, all of which are designed to eliminate coal mine workers

pneumoconiosis or black lung. In 1995, a nine member Advisory Committee with representatives from labor, mining, and academia was established to provide recommendations for eliminating black lung and silicosis among coal miners. The committee provided MSHA with 20 major recommendations with over 100 action steps. The committee unanimously concluded that the current sampling program should be reformed to improve the reliability of the samples and enhance the credibility of the program. MSHA is working toward implementing the recommendations of the committee.

MSHA's FY 1999 request for 40 FTE and \$2.7 million will be used to expand the Federal dust sampling program at mines that continue to have difficulty maintaining consistent compliance or that submit samples that appear to be unrepresentative of the mine environment. In addition, MSHA recently announced that, beginning in April 1998, the agency will begin to base noncompliance (with the current permissible exposure level) determinations on the results of single full shift respirable dust samples taken by MSHA inspectors. This will replace the current method of relying on the average of several samples taken by inspectors. The single shift sampling method was recommended by the 1995 Advisory Committee and NIOSH. MSHA used the single shift sampling method in coal mines for about two years in the early 1990's and it was found to be effective in identifying miners' overexposure to respirable coal dust and ensuring that the hazard was corrected. This policy will not affect the operator sampling program.

MSHA is also looking to technology to change and improve the system of monitoring dust levels. We will test a machine mounted version of a continuous monitor in a number of coal mines throughout the country. This device may allow us to assess the effectiveness of respirable dust control measures used in underground coal mines. In addition, work is continuing on the development of a monitoring device that can be worn by a miner and provide a continuous "read out" of the miner's actual exposure to dust.

We believe that these steps coupled with changes to MSHA's dust regulations (CFR parts 70, 75 and 90) will enable us to achieve our goal of protecting miners from exposure to coal dust and contracting black lung.

Mr. Porter: Do you have any current plans to have your agency completely take over the monitoring of dust levels?

Mr. McAteer: The Advisory Committee recommended that MSHA consider taking over the respirable dust sampling for compliance purposes in coal mines. MSHA is looking to make improvements to the current system and to eventually take over the responsibility for compliance sampling. We believe this

will improve the effectiveness of the program. The FY 1999 budget includes steps towards this goal. The Advisory Committee made a number of additional recommendations to improve the reliability of the program to protect miners from contracting black lung. Consistent with the unanimous agreement that the current system must be improved, MSHA is taking steps to ensure that the Agency increases the frequency of its own monitoring for compliance with dust standards to ensure that respirable dust samples are taken at all underground coal mines four times a year and twice annually at all surface coal mines. In addition, the Agency's FY 1999 request will enable MSHA to take additional samples at mines with known compliance problems.

Mr. Porter: Would it be a good idea for the Federal government to do this?

Mr. McAteer: MSHA is not looking to take over the program in its current form. The cost associated with replicating and replacing the operator sampling program with Federal inspectors would require approximately 484 FTE. In addition, there would be a substantial increase in financial resources necessary to purchase sampling equipment, filter cassettes, automobiles, office space, and inspector equipment associated with this effort. We believe that there are other, more cost efficient options which may offer the same level (or higher) of protection to miners. MSHA seeks to improve the program through the use of continuous monitoring devices, better dust control plans, and strengthened medical surveillance. Ultimately, MSHA plans to take over the responsibility for compliance sampling. We believe this will improve the effectiveness of the program.

## STATE ENFORCEMENT PROGRAMS

Mr. Porter: To what extent are States also carrying out their own mine inspection programs?

Mr. McAteer: As seen on this chart, State inspection programs range from nonexistent to at least one State, West Virginia, that conducts inspections with the same frequency as MSHA. However, the States with the largest inspectorates — Kentucky, Pennsylvania, Virginia, and West Virginia -- do not conduct activities related to protecting miners' health as MSHA does, such as sampling for respirable dust and noise. Several State programs focus solely on providing training assistance. Other States inspect some mining commodities, but not all that fall under MSHA's jurisdiction. And each State enforces its own mining code. On the other hand, MSHA administers a Federal statutory program that provides a consistent, Nationwide application of safety and health standards and protection of miners' rights, ensuring that miners have a workplace that meets Federal minimum standards, regardless of the State in which they work.



### MINE SAFETY AND HEALTH DATA BY STATE

STATE		NO. OF MINES	NO. OF MINERS*	NO. OF UG MINES	FATALITIES 1993-1997**	INJURIES 1990-1993***	STATE PROVIDED MINE RESCUE SERVICES	STATE CONDUCTED MINE SAFETY AND HEALTH ACTIVITIES	TOTAL FY-97 MSHA GRANT
AL	COAL	85	5,021	16	9	3,922	Supports two mine rescue teams in the state.	Conducts safety and health inspection with five inspectors at both Coal and Metal/NonMetal (M/NM) mines.	\$165,000
	M/NM	166	3,398	2	1	794			
	TOTAL	251	8,419	18	10	4,716			
AK	COAL	2	108	1	0	26	None	One instructor-training only for M/NM.	\$33,000
	M/NM	75	1,277	6	3	358			
	TOTAL	77	1,385	7	3	384			
AZ	COAL	3	714	0	0	108	None at coal. M/NM .maintains three mine rescue stations that maintain the equipment for 13 mine rescue teams. All are industry team members.	None at coal. M/NM .has six state inspectors/ two state trainers. Approx. 24 training sessions in FY 1997. Navajo Reservation has own inspectors for Coal and M/NM.	\$158,000
	M/NM	276	12,396	9	15	2,621			
	TOTAL	279	13,110	9	15	2,729			
AR	COAL	6	9	2	0	4	None	One inspector and one trainer that only conduct training for both Coal and M/NM.	\$64,000
	M/NM	173	3,055	1	3	1,148			
	TOTAL	179	3,064	3	3	1,152			
CA	COAL	2	31	0	0	10	None	Ten inspectors and two instructors for M/NM mines.	\$196,000
	M/NM	553	10,963	24	21	3,540			

\* DOES NOT INCLUDE CONTRACTORS WORKING AT MINE SITES

\*\* AS OF 12/31/97\*\*\* INJURY TOTALS INCLUDE OPERATOR AND CONTRACTOR INJURIES; 1997 INJURIES THROUGH 9/30/97; INJURIES FOR 1993 THROUGH 1996 ARE FINAL.

STATE		NO. OF MINES	NO. OF MINERS*	NO. OF UG MINES	FATALITIES 1993-1997**	INJURIES 1990-1993***	STATE PROVIDED MINE RESCUE SERVICES	STATE CONDUCTED MINE SAFETY AND HEALTH ACTIVITIES	TOTAL FY-97 MSHA GRANT
	TOTAL	555	10,994	24	21	3,550			
CO	COAL	24	1,655	15	2	1,015	Maintains two mine rescue stations including equipment. Teams are made up of industry team members.	Four trainers cover both Coal and M/NM operations.	\$142,000
	M/NM	328	3,498	11	4	1,030			
	TOTAL	352	5,153	26	6	2,045			
CT	COAL				0	0	None	Miner training provided by the University of CT. No health activities. No technical support.	\$22,000
	M/NM	93	886	0	2	208			
	TOTAL	93	886	0	2	208			
DE	COAL				0	0	None	None	None
	M/NM	8	126	0	0	8			
	TOTAL	8	126	0	0	8			
FL	COAL				0	0	None	One instructor conducts miner training only. No health activities. No technical support	\$126,000
	M/NM	220	7,586	0	9	1,376			
	TOTAL	220	7,586	0	9	1,376			
GA	COAL				0	0	None	Several instructors conduct miner training. No health activities. No technical support	\$139,000
	M/NM	237	7,934	6	9	1,519			
	TOTAL	237	7,934	6	9	1,519			

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STATE		NO. OF MINES	NO. OF MINERS*	NO. OF UG MINES	FATALITIES 1993-1997**	INJURIES 1990-1993***	STATE PROVIDED MINE RESCUE SERVICES	STATE CONDUCTED MINE SAFETY AND HEALTH ACTIVITIES	TOTAL FY-97 MSHA GRANT
HI	COAL				0	0	None	None	None
	M/NM	36	378	0	0	237			
	TOTAL	36	378	0	0	237			
ID	COAL				0	0	None	None	\$60,000
	M/NM	191	2,990	7	6	900			
	TOTAL	191	2,990	7	6	900			
IL	COAL	46	4,635	19	8	3,715	Maintains two mine rescue stations with equipment for two teams each for both Coal and M/NM mines.	Six inspectors conduct safety & health inspections of underground Coal mines, surface mines & support facilities monthly.  Four instructors/accident prevention specialists provide training to get certified, training to become EMT, & on accident prevention for both Coal & M/NM.	\$222,000
	M/NM	320	4,735	5	9	1,316			
	TOTAL	366	9,370	24	17	5,031			

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STATE		NO. OF MINES	NO. OF MINERS*	NO. OF UG MINES	FATALITIES 1993-1997**	INJURIES 1990-1993***	STATE PROVIDED MINE RESCUE SERVICES	STATE CONDUCTED MINE SAFETY AND HEALTH ACTIVITIES	TOTAL FY-97 MSHA GRANT
IN	COAL	50	2,889	4	1	884	IBOM maintains fully equipped mine rescue station. Has equipment for two teams who are volunteer miners for both Coal & M/NM.	One inspector to cover underground Coal mines only. IBOM also investigates fatal and serious mining accidents.  IBOM administers examinations to certify miners as mine foreman, fire boss, mine electrician, belt examiner, shot fire, & hoisting engineer.	\$125,000
	M/NM	258	3,651	9	2	1,109			
	TOTAL	308	6,540	13	3	1,993			

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STATE		NO. OF MINES	NO. OF MINERS*	NO. OF UG MINES	FATALITIES 1993-1997**	INJURIES 1990-1993***	STATE PROVIDED MINE RESCUE SERVICES	STATE CONDUCTED MINE SAFETY AND HEALTH ACTIVITIES	TOTAL FY-97 MSHA GRANT
IA	COAL				0	5	None	None	\$52,000
	M/NM	246	2,755	10	4	593			
	TOTAL	246	2,755	10	4	598			
KS	COAL	3	69	0	0	19	None	Three instructors conduct training for M/NM operations.	\$75,000
	M/NM	183	2,309	11	4	1,187			
	TOTAL	186	2,378	11	4	1,206			
KY	COAL	836	19,101	391	60	10,948	KDMM supplies 12 teams within the state which are primary sources of teams for KY mines. Teams are KY employees for both Coal & M/NM.	Over 50 inspectors & nearly 25 safety analysts enforce state mining laws, approve mine plans, & promote safety in both surface & underground mines. No health activities.  Inspection division has specialists in roof control, ventilation, electrical, blasting, & safety work procedures, but rely upon MSHA for expertise as needed.  KDMM has 14 instructors that train and certify miners and conduct Part 48 courses in electrical, mine emergency technician, blasting & other subjects.	\$596,000
	M/NM	137	3,195	22	5	763			
	TOTAL	973	22,296	413	65	11,711			

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STATE		NO. OF MINES	NO. OF MINERS*	NO. OF UG MINES	FATALITIES 1993-1997**	INJURIES 1990-1993***	STATE PROVIDED MINE RESCUE SERVICES	STATE CONDUCTED MINE SAFETY AND HEALTH ACTIVITIES	TOTAL FY-97 MSHA GRANT
LA	COAL	2	147	0	0	41	None	None	None
	M/NM	146	2,661	4	2	436			
	TOTAL	148	2,808	4	2	477			
ME	COAL				0	0	None	Several instructors conduct training and compliance assistance.	\$25,000
	M/NM	126	632	0	0	90			
	TOTAL	126	632	0	0	90			
MD	COAL	19	500	3	0	217	None	None	None
	M/NM	74	1,857	2	3	420			
	TOTAL	93	2,357	5	3	637			
MA	COAL				0	0	None	Conducts 22 mine health and safety inspections annually. Conducts ten days of mine safety and health training per year. Also provides some technical support.	\$36,000
	M/NM	141	1,237	0	2	193			
	TOTAL	141	1,237	0	2	193			
MI	COAL				0	0	None	Several instructors conduct mine safety and health training. No technical support.	\$113,000
	M/NM	416	5,508	5	6	2,079			
	TOTAL	416	5,508	5	6	2,079			

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STATE		NO. OF MINES	NO. OF MINERS*	NO. OF UG MINES	FATALITIES 1993-1997**	INJURIES 1990-1993***	STATE PROVIDED MINE RESCUE SERVICES	STATE CONDUCTED MINE SAFETY AND HEALTH ACTIVITIES	TOTAL FY-97 MSHA GRANT
MN	COAL				0	0	None	No state inspectors; St. Louis County has four inspectors for the large Taconite operations.	\$167,000
	M/NM	370	8,419	0	1	2,256			
	TOTAL	370	8,419	0	1	2,256			
MS	COAL				0	0	None	Several instructors conduct mine safety and health training. No technical support	\$36,000
	M/NM	117	1,367	0	3	196			
	TOTAL	117	1,367	0	3	196			
MO	COAL	8	134	0	0	35	None	One coal mine inspector and four trainers for M/NM.	\$129,000
	M/NM	357	6,827	25	12	2,307			
	TOTAL	365	6,961	25	12	2,342			
MT	COAL	7	861	1	0	193	None	Two inspectors for Coal, one inspector for M/NM and one trainer for both.	\$83,000
	M/NM	214	3,061	10	3	981			
	TOTAL	221	3,922	11	3	1,174			
NE	COAL				0	0	None	New workers comp Bill targets inspection of facilities with above average workers comp rates. Some mines are targeted and inspected. Training conducted.	\$56,000
	M/NM	189	1,057	3	2	305			
	TOTAL	189	1,057	3	2	305			

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NV	COAL				0	0	Yes, it maintains a trailer	Eight inspectors, (one Industrial Hygienist), Inspections and limited technical assistance. Training Conducted.	\$118,000
	M/NM	220	13,491	20	22	3,435			
	TOTAL	220	13,491	20	22	3,435			
NH	COAL				0	0	None	Training only.	\$16,000
	M/NM	79	436	0	2	165			
	TOTAL	79	436	0	2	165			
NJ	COAL				0	0	None	Two inspectors and two blasting inspectors (all industries), accident investigations. Limited technical assistance. No health. Training conducted.	\$31,000
	M/NM	85	1,750	0	3	468			
	TOTAL	85	1,750	0	3	468			
NM	COAL	9	1,502	1	2	366	None	Four inspectors for Coal & M/NM operations. No funding for safety & health inspections.  Conducts Part 48 training & administers certification program for mine foreman.	\$108,000
	M/NM	206	5,161	8	5	1,038			
	TOTAL	215	6,663	9	7	1,404			

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NY	COAL				0	0	None	No inspections, some training and compliance assistance (2 ½ employees).	\$192,000
	M/NM	604	5,013	7	2	1,192			
	TOTAL	604	5,013	7	2	1,192			
NC	COAL				0	0	None	Eight employees. Inspections, technical assistance, limited health , training provided.	\$64,000
	M/NM	267	4,629	0	5	799			
	TOTAL	267	4,629	0	5	799			
ND	COAL	6	909	0	0	160	None	None	\$32,000
	M/NM	94	390	0	0	43			
	TOTAL	100	1,299	0	0	203			
OH	COAL	118	3,444	10	1	1,081	State maintains three mine rescue stations. State inspectors are team members for both Coal & M/NM.	State employees 10 -15 inspectors.  State employees three trainers. Inspectors and training are for both Coal & M/NM.	\$143,000
	M/NM	344	5,335	3	3	1,663			
	TOTAL	462	8,779	13	4	2,744			
OK	COAL	10	246	1	0	116	None	Eight surface inspectors ans one underground inspectors and training for both Coal and M/NM operations. Also conducts BOR work.	\$64,000
	M/NM	171	2,322	1	2	635			
	TOTAL	181	2,568	2	2	751			

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OR	COAL				0	0	None	Training only.	\$68,000
	M/NM	234	2,133	0	4	508			
	TOTAL	234	2,133	0	4	508			
PA	COAL	576	9,816	112	27	6,413	No state team, but state trains teams and provides equipment and maintenance for both Coal & M/NM	Conducts two underground inspections each year per mine, with 67 inspection personnel. No health activities. Investigates accidents. For both Coal & M/NM Training provided related to blasting and explosives, mine rescue and machine operations.	\$455,000
	M/NM	373	7,205	11	13	2,320			
	TOTAL	949	17,021	123	40	8,733			
RI	COAL				0	0	None	None	None
	M/NM	23	146	0	0	22			
	TOTAL	23	146	0	0	22			
SC	COAL				0	0	None	Two inspectors conduct training. No inspections.	\$47,000
	M/NM	130	2,190	0	5	443			
	TOTAL	130	2,190	0	5	443			
SD	COAL				0	0	None	None	None
	M/NM	118	2,156	1	2	872			

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OR	COAL				0	0	None	Training only.	\$68,000
	M/NM	234	2,133	0	4	508			
	TOTAL	234	2,133	0	4	508			
PA	COAL	576	9,816	112	27	6,413	No state team, but state trains teams and provides equipment and maintenance for both Coal & M/NM	Conducts two underground inspections each year per mine, with 67 inspection personnel. No health activities. Investigates accidents. For both Coal & M/NM Training provided related to blasting and explosives, mine rescue and machine operations.	\$455,000
	M/NM	373	7,205	11	13	2,320			
	TOTAL	949	17,021	123	40	8,733			
RI	COAL				0	0	None	None	None
	M/NM	23	146	0	0	22			
	TOTAL	23	146	0	0	22			
SC	COAL				0	0	None	Two inspectors conduct training. No inspections.	\$47,000
	M/NM	130	2,190	0	5	443			
	TOTAL	130	2,190	0	5	443			
SD	COAL				0	0	None	None	None
	M/NM	118	2,156	1	2	872			

\* DOES NOT INCLUDE CONTRACTORS WORKING AT MINE SITES

\*\* AS OF 12/31/97\*\*\* INJURY TOTALS INCLUDE OPERATOR AND CONTRACTOR INJURIES; 1997 INJURIES THROUGH 9/30/97; INJURIES FOR 1993 THROUGH 1996 ARE FINAL.

STATE		NO. OF MINES	NO. OF MINERS*	NO. OF UG MINES	FATALITIES 1993-1997**	INJURIES 1990-1993***	STATE PROVIDED MINE RESCUE SERVICES	STATE CONDUCTED MINE SAFETY AND HEALTH ACTIVITIES	TOTAL FY-97 MSHA GRANT
	TOTAL	118	2,156	1	2	872			
TN	COAL	46	703	20	6	371	TDOL trains and equips two mine rescue teams which provide service to TN mines.	None. Mines and coal handling facilities must have state license.	\$94,000
	M/NM	220	4,531	11	7	982		TDOL provides certification and training services.	
	TOTAL	266	5,234	31	13	1,353		Five instructors train and certify miners related to federal qualifications and Part 48.	
TX	COAL	16	2,453	0	1	678	None	No inspectors; training conducted by University of Texas.	\$240,000
	M/NM	579	11,196	5	13	2,827			
	TOTAL	595	13,649	5	14	3,505			
UT	COAL	22	1,945	16	9	816	None	One person who does training and administers state certification tests for Coal only.	\$112,000
	M/NM	221	4,305	14	6	757			
	TOTAL	243	6,250	30	15	1,573			
VT	COAL				0	0	None	None	None
	M/NM	176	1,119	1	2	378			
	TOTAL	176	1,119	1	2	378			

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STATE		NO. OF MINES	NO. OF MINERS*	NO. OF UG MINES	FATALITIES 1993-1997**	INJURIES 1990-1993***	STATE PROVIDED MINE RESCUE SERVICES	STATE CONDUCTED MINE SAFETY AND HEALTH ACTIVITIES	TOTAL FY-97 MSHA GRANT
VA	COAL	274	6,841	164	13	3,469	DMME coordinates program where four company teams provide service to 27 small mines.	DMME conducts two complete inspections at each mine per year with 30+ inspection personnel. No health activities. For Coal only	\$260,000
	M/NM	172	4,050	3	7	959		Technical Support provided by specialists in roof control, ventilation and electrical. Roof control and ventilation plans are reviewed and approved in cooperation with MSHA. For Coal only.	
	HDQRS.								
	TOTAL	446	10,891	167	20	4,428		Some training provided on bleeder plans. Small Mine Pilot program covering 30 CFR provides training for about 20 small mines. For both Coal & M/NM.	
WA	COAL	2	551	0	1	116	None	One instructor and training at N/MN mines.	\$103,000
	M/NM	325	2,814	5	6	855			
	TOTAL	327	3,365	5	7	971			

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STATE		NO. OF MINES	NO. OF MINERS*	NO. OF UG MINES	FATALITIES 1993-1997**	INJURIES 1990-1993***	STATE PROVIDED MINE RESCUE SERVICES	STATE CONDUCTED MINE SAFETY AND HEALTH ACTIVITIES	TOTAL FY-97 MSHA GRANT
WV	COAL	560	18,892	286	58	9,773	None	Conducts 4's and 2's inspections with over 100 inspectors. No health activities. For both Coal & M/NM.	\$504,000
	M/NM	53	1,109	4	0	321			
	TOTAL	613	20,001	290	58	10,094			
WI	COAL				0	0	None	Three inspectors. Provide training., technical assistance, no health and limited inspections.	\$138,000
	M/NM	496	3,370	1	6	944			
	TOTAL	496	3,370	1	6	944			
WY	COAL	31	4,057	2	4	806	None	Four inspectors for both coal and M/NM operations. Conducts safety and health inspections.  Training is conducted through the state grants program.	\$88,000
	M/NM	120	4,729	7	4	1,185			
	TOTAL	151	8,786	9	8	1,991			
PR	COAL				0	0	None	None	None
	M/NM	122	2,063	0	1	438			
	TOTAL	122	2,063	0	1	438			
VI	COAL				0	0	None	None	None
	M/NM	4	149	0	0	33			
	TOTAL	4	149	0	0	33			

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\*\* AS OF 12/31/97\*\*\* INJURY TOTALS INCLUDE OPERATOR AND CONTRACTOR INJURIES; 1997 INJURIES THROUGH 9/30/97; INJURIES FOR 1993 THROUGH 1996 ARE FINAL.

Mr. Porter: Do we have situations now where an operator can be inspected by your agency and then be inspected again later by a State agency?

Mr. McAteer: In States without State inspectors or with inspectors who only provide training assistance, this, of course, would not happen. However, there are a few States where this certainly can and does happen. As the charts indicate, however, it is highly unlikely that the focus of the two inspections would be the same. States with small inspectorates, in particular, tend to provide compliance and technical assistance training. The MSHA inspection focuses on compliance with the Federal minimum standards, regardless of the State law. States can and some States do have some compliance requirements that are more stringent than the Federal minimum standard. However, MSHA only enforces the Federal standard.

Mr. Porter: To what extent do you coordinate your inspection efforts with the States that also have their own programs?

Mr. McAteer: As you know, the Mine Act prohibits us from notifying anyone of an upcoming inspection, including the State agencies. However, MSHA is always willing to coordinate its efforts with State programs. In fact, the Agency's State Grant program is a key source of funding for many States. Generally, State Grants are used in a manner that complements the Federal program, often in establishing and maintaining State training assistance programs. We try to coordinate our efforts to the extent possible so that we do not have a State and an MSHA inspector at a mine at the same time. In this way, we can maximize our presence at the Nation's mines. There are certain circumstances when we coordinate our efforts to be at the mine together. Fatal accidents are investigated jointly by MSHA and the State agencies. In some States, such as Virginia, the visits to the victim's family are done jointly. In Virginia, there is effort to release reports of the investigations at the same time. We also try to coordinate our inspection responses to complaints of smoking in underground coal mines.

There are other examples of cooperation between MSHA and State agencies in addition to inspection activities. On July 15, 1997, there were four fatalities in underground coal mines in a 24 hour period, all caused by falling roof material. Three of these fatalities occurred in Virginia. One of the initiatives undertaken as a result of these fatalities was the development of a roof control seminar specific to Virginia. The seminar was jointly developed by MSHA and the Virginia Department of Mines, Minerals and Energy (DMME). MSHA and DMME jointly presented this seminar on two separate occasions to the mining industry in Virginia. MSHA and DMME also are now issuing a joint approval of the mine operator's roof control plan signed by both the MSHA District Manager and the DMME Director. More recently there has been an increase in fatal accidents in southern West Virginia. MSHA and the West Virginia Division of Energy have coordinated visits to mines in the southern portion of the State to talk to miners about these accidents as well as recent accidents in other States. Again the coordination was to maximize the number of mines and miners contacted in the shortest period of time to emphasize the dangers inherent in mining. MSHA also has a Memorandum of Understanding with the Kentucky Department of Mines and Minerals to foster cooperation. As part of that effort, MSHA and State supervisors meet periodically to discuss and coordinate their plans.

Mr. Porter: If we are having duplicate inspections, doesn't this create a burdensome situation for the mine operator?

Mr. McAteer: Again, as seen on the charts provided, there is a great diversity in the type and level of activity conducted by those States with State inspection programs. MSHA is statutorily bound to inspect all surface mines twice a year and all underground mines four times a year to ascertain compliance with the Federal minimum standards. For the majority of mine operations, Nationwide, there are no State inspections. In States where there are strong inspection programs, there does not appear to be any State where the Federal and State inspections are truly duplicate. In fact, those States can be viewed as having chosen a health and safety scheme that provides their workers with protections that exceed the Federal minimum standards.

#### AGENCY STAFFING

Mr. Porter: How many of your staff are actually mine inspectors?

Mr. McAteer: FY 1997 ended with 848 inspectors on board.

Mr. Porter: And how do the inspectors break down between coal and metal and nonmetal mines?

Mr. McAteer: The metal-nonmetal program had 278 inspectors on board at the end of FY 1997. The coal program had 570 inspectors on board.

Mr. Porter: Is it possible that you may have too many coal inspectors and not enough in the metal and nonmetal area?

Mr. McAteer: Initially one might think that the spread of inspectors is not optimal, given the recent upsurge of fatalities in the metal-nonmetal industry. However, before throwing resources at this problem, we need to analyze specific causes of the fatality increase and determine what resources are necessary to attack the root causes. To reduce fatalities, the most effective approach may not be to increase inspector FTE, as there are a number of factors in the metal-nonmetal industry which could be contributing to the increase in fatalities. The industry trend of increased production of basic minerals correlates with an influx of inexperienced and less trained employees, who are working longer hours to meet production demands. The industry has also had an increased reliance on contractors on mine property. Currently we are taking a comprehensive approach and focusing on the areas that demand increased attention, such as the use of basic safety equipment.

The FY 1999 request includes 6 FTE and \$495,000 for hazard targeting activities, where the agency will identify underlying causes of persistent safety and health problems and develop appropriate remedies and preventive measures. These additional resources will enhance cooperative efforts with the mining community to improve safety and health conditions in the mines.



Regarding the coal FTE level, these resources are required to address concerns in the coal area of health. MSHA is currently increasing sampling by inspectors in the respirable dust program, which required an increase of 24 FTE in FY 1998. The Advisory Committee appointed by the Secretary of Labor recommended that MSHA take over the operator sampling program, in response to concerns about the integrity of this program. Because of the statutory and fiscal considerations just mentioned, we are also requesting additional resources in FY 1999 to increase Federal oversight of the operator program, but not to replace it.

## SIGNIFICANT AND SUBSTANTIAL

Mr. Bonilla: On February 5, 1998, the MSHA published a notice in the Federal Register announcing that it will seek to overturn a decision issued by the Federal Mine Safety and Health Review Commissions sixteen years ago. There is concern that MSHA is seeking to summarily repudiate its own duly promulgated regulations. Why is MSHA seeking to overturn this decision?

Mr. McAteer: MSHA is seeking to ensure that the definition of "significant and substantial" (S&S) violations as applied by the Federal Mine Safety and Health Review Commission (Commission) and MSHA is consistent with the Federal Mine Safety and Health Act of 1977 and its legislative intent.

MSHA's civil penalty regulations use the current Commission language (reasonably likely to result in a reasonably serious injury or illness) as a criteria for determining eligibility for the \$50 "single penalty," therefore, absent a change in these regulations, civil penalties would be calculated in the same manner as they are now. Any change to these regulations would have to be accomplished through rulemaking. MSHA's decision to challenge the Commission's definition of S&S is not likely to be resolved through the judicial process for some time. In addition, MSHA has asked for comment from the mining community on the impact of the recent interpretative bulletin in which the Secretary outlined her position on this issue. These comments, including views on penalties, will be considered by the Agency.

The 1977 Mine Act describes S&S violations as those that "could significantly and substantially contribute to the cause and effect of a mine safety or health hazard." The S&S designation is important because safety departments and miners are more likely to treat violations designated as S&S as important to miners' safety and health and hold people accountable for them. MSHA is asserting a different legal interpretation of S&S because a series of cases decided under the 1982 Commission interpretation has demonstrated that the current interpretation imposes a test which is too narrow and too complicated for determining whether violations present real threats to miner safety and health. MSHA is concerned that this case law has seriously eroded the statutory intent of S&S, restricting MSHA's ability to protect miners from very real risks of injury, illness, or death.

In a case (Hobet Mining) currently before a Commission trial judge, MSHA has challenged the Commission's 1982 interpretation of what constitutes a "significant and substantial" (S&S) violation. MSHA advised the mining community of its decision to resolve this matter through test cases in the February 5 Federal Register notice.

MSHA enforcement personnel will not change current enforcement practices or procedures pending the outcome of the litigation.

## SIGNIFICANT AND SUBSTANTIAL

Mr. Istook: Mr. Secretary, on February 5th you announced your intention to seek to overturn a decision of the Federal Mine Safety and Health Review Commission issued 16 years ago in the National Gypsum case. This decision defined the conditions under which violations of the Mine Act are deemed to be of a "significant and substantial" nature. None of your predecessors felt it necessary to seek to overturn this and safety in the mines continues to improve. Why is this necessary now? Shouldn't we expect these types of violations to decrease as safety improves?

Mr. McAteer: MSHA is seeking to ensure that the definition of "significant and substantial" (S&S) violations as applied by the Federal Mine Safety and Health Review Commission (Commission) and MSHA is consistent with the Federal Mine safety and Health Act of 1977 and its legislative intent.

In a case (Hobet Mining) currently before a Commission trial judge, MSHA has challenged the Commission's 1982 interpretation of what constitutes a "significant and substantial" (S&S) violation. MSHA advised the mining community of its decision to resolve this matter through test cases in the February 5 Federal Register notice. MSHA has asked for public comment on the implementation and impact on the Agency's interpretation of S&S.

MSHA enforcement personnel will not change current enforcement practices or procedures pending the outcome of the litigation.

The 1977 Mine Act describes S&S violations as those that "could significantly and substantially contribute to the cause and effect of a mine safety or health hazard." The S&S designation is important because safety departments and miners are more likely to treat violations designated as S&S as important to miners' safety and health and hold people accountable for them. MSHA is asserting a different legal interpretation of S&S because a series of cases decided under the 1982 Commission's interpretation has demonstrated that the current interpretation imposes a test which is too narrow and too complicated for determining whether violations present real threats to miner safety and health. MSHA is concerned that this case law has seriously eroded the statutory intent of S&S, restricting MSHA's ability to protect miners from very real risks of injury, illness, or death.

Under the Commission's 1982 interpretation of S&S, a violation is S&S only if it is reasonably likely to result in a reasonably serious injury. Under MSHA's interpretation, a violation is S&S if it presents a hazard that has more than a remote or speculative chance of occurring -- that is, if it presents a safety or health hazard that has a realistic possibility of occurring.

We would expect S&S violations to decrease as safety improves. Generally, the greater the commitment to safety, the fewer S&S violations are found. MSHA does not measure its performance by the number of S&S violations issued; we are interested in assuring that miners receive the full protection of the Mine Act.

Mr. Istook: Your Interpretive Bulletin in the S&S matter indicates that the agency never adopted the National Gypsum test definition yet it appears that it has been adopted in your Part 100 civil penalty regulations. How do you intend to address this conflict? Will revisions to your regulations be proposed if the National Gypsum decision is overturned?

MSHA's civil penalty regulations use the current Commission language (reasonably likely to result in a reasonably serious injury or illness) as a criteria for determining eligibility for the \$50 "single penalty," therefore, absent a change in these regulations, civil penalties would be calculated in the same manner as they are now. Any change to these regulations would have to be accomplished through rulemaking. MSHA's decision to challenge the Commission's definition of S&S is not likely to be resolved through the judicial process for some time. In addition, MSHA has asked for comment from the mining community on the impact of the recent interpretative bulletin in which the Secretary outlined her position on this issue. These comments, including views on penalties, will be considered by the Agency.

## FATALITIES

Mr. Istook: Your budget submission includes 40 FTE's for the coal enforcement program yet coal fatalities reached an all-time low last year. Conversely, sand, gravel and stone fatalities comprised 42 of the 60 metal/nonmetal fatalities. Shouldn't more resources be committed to this segment--stone, sand and gravel, rather coal or metal?

Mr. McAteer: A combination of timing of budget cycles and attrition has, in some areas, lead to imbalances in our staffing levels. Hiring and completing the necessary training of new staff (a process that involves significant time before a person is capable of independently conducting mine inspections) is part of the answer.

The FY 1999 request includes 6 FTE and \$495,000 for hazard targeting activities in metal/nonmetal mines (which includes stone, sand and gravel industries), where the agency will identify the underlying causes of persistent safety and health problems and develop appropriate remedies and preventive measures. These additional resources will enhance cooperative efforts with the mining community to improve safety and health conditions in the mines.

We also have been and will continue to be sufficiently flexible to marshal our resources agency-wide and concentrate them where they are needed most. In some measure, this approach is

reflected in the initiatives we have discussed. Where we see the industry is experiencing a problem, we have issued alerts, identified safe practices and followed-up with inspections. We will continue this approach, including committing the necessary resources to the stone, sand, gravel and quarry mining sector.

## POLICY INITIATIVES

Mr. Istook: In the last several months you have proposed several policy initiatives which appear to circumvent the normal notice and comment procedures of the Mine Act and the Administrative Procedure Act. How do you respond to industry concerns about the agency's move toward regulation through policy?

Mr. McAteer: We are not moving "toward regulation through policy." In American Mining Congress v. MSHA, 995 F.2d. 1106 (D.C. Cir. 1993) the Court of Appeals for the D.C. Circuit held that an MSHA policy statement did not have to go through notice and comment rulemaking. That policy was typical of the policy statements published in MSHA's Program Policy Manual. It notified the mining industry that MSHA interpreted its illness reporting regulations as applying to miners who had x-ray readings categorized as 1/0 or greater. Despite the clear statement from the court that rulemaking is not required, MSHA recognizes that public input frequently improves the quality of agency decision making. Therefore, MSHA has adopted a practice of voluntarily publishing significant Program Policy Letters in the Federal Register for public comment before being finalized. In according the public notice of proposed Agency action and an opportunity for comment, this voluntary practice goes beyond the requirements of the Mine Act and the Administrative Procedure Act.

The recently published Interpretative Bulletin setting forth the Department's legal position regarding the correct interpretation of the statutory phrase "significant and substantial" arose in the context of taking a legal position in pending litigation and is therefore not a typical policy statement. Nonetheless, in recognition of the mining industry's interest in the S&S issue, MSHA has solicited public comment in the Federal Register on the impact of its interpretation.

## INSPECTION PROCEDURES

Mr. Istook: What have you done to streamline inspection procedures so that your inspectors can spend more time at those operations where safety is a problem?

Mr. McAteer: MSHA has taken the following steps to streamline inspection procedures to allow inspectors more time at those mines where safety is a problem. By combining certain similar aspects of inspections, duplication has been minimized. MSHA has minimized the paperwork aspects of the inspections, allowing inspectors to spend more time checking for safety hazards at problem mines and spend less time at safe mines filling out unnecessary forms. MSHA also continues to expand and improve its laptop computer initiative for inspectors. Inspectors can access mine specific compliance and accident and injury historical information which is useful to both the inspector and mine operator.

These efforts free additional time for inspectors to place more emphasis on higher risk areas. The FY 1999 request includes 16 FTE and \$1,175,000 for hazard targeting activities, where the agency will identify the underlying causes of persistent safety and health problems and develop appropriate remedies and preventive measures. These additional resources will enhance cooperative efforts with the mining community to improve safety and health conditions in the mines.

MSHA has also undertaken a number of other special emphasis initiatives to address conditions and practices that present hazards to miners. These initiatives include alerts to the mining industry, identification of safe practices, and follow-up inspections. In addition, MSHA has directed attention to the dangers of haulage equipment, and has worked with the mining community to stop accidents.

Accident and injury prevention is an ongoing process that must keep pace with rapidly changing workplace conditions and practices. MSHA will continue to evaluate and develop profiles of accident and injury experience at our Nation's mines, to be able to respond effectively to those circumstances that present the greatest hazards to miners.

#### ABNORMAL WHITE CENTER LITIGATION

Mr. Istook: What is the status of the "abnormal white center" litigation? Two separate decisions have been issued ruling in favor of the industry defendants yet the agency continues to pursue this litigation? Can you explain your position and why this case was not settled when the opportunity arose?

Mr. McAteer: The "abnormal white center" (AWC) litigation is pending before the U.S. Court of Appeals for the District of Columbia Circuit. The appeal has been fully briefed and oral argument is scheduled for April 20, 1998. We believe that the Administrative Law Judge (ALJ) and the Commission made critical errors of law in deciding the case as they did. Among our claims of legal error is our contention that the ALJ never reached the question of what was the most likely cause of the abnormal white centers on the cited dust filters. The case was not settled because the parties could not come to a mutually satisfactory agreement on the terms for settlement.

#### METAL/NONMETAL MINES

Mr. Istook: In your budget request and supporting documents, you refer to approximately 11,000 metal/nonmetal mines under MSHA jurisdiction.

Mr. Istook: How many of those mines operate more than 250 days per year?

Mr. McAteer: Although MSHA does not track the exact number of days metal/nonmetal mines operate per year, MSHA does classify operating mines as either full-time permanent or intermittent. According to our statistics, there were 5,130 full-time permanent mines and 5,855 intermittent mines. A full-time permanent mine is defined as: a mine which operates on a full-time basis, 12 months a year. Temporary closure due to unusual or unforeseen circumstances,

such as strikes, mine disasters, temporary maintenance shutdowns, etc., does not change this status. An intermittent mine is defined as: a mine that can reasonably be expected to operate at some time during the year. These operation times will vary due to the demand for a product or seasonal conditions. In the past year, many of the intermittent mines have increased production, due to more optimal weather conditions and increased product demand.

Mr. Istook: How many of those mines employ more than 20 miners?

Mr. McAteer: Of the approximately 11,000 metal/nonmetal mines, 1,775 have an average employment of 20 or more miners.

Mr. Istook: How many are surface mines subject to two inspections/year?

Mr. McAteer: There are 10,812 surface mines that require two complete inspections per year.

Mr. Istook: How long, on average, does it take an MSHA inspector to inspect a surface metal/nonmetal mine employing fewer than 20 miners?

Mr. McAteer: On average, 14 hours would be required to inspect a surface metal/nonmetal mine employing fewer than 20 people. However, variables such as the number of employees, the complexity of the operations, and whether health sampling is needed must be considered. A small sand and gravel operation with three employees where health sampling is not performed would require less time to inspect than would a larger stone quarry employing 19 miners where health sampling is conducted.

## SIGNIFICANT AND SUBSTANTIAL

Mr. Dickey: On February 5, 1998, MSHA published a notice that it will seek to change the sixteen year definition of what is a "significant and substantial" violation of the Federal Mine Safety and Health Act. In 1982 the independent Federal Mine Safety and Health Review Commission determined that a "significant and substantial" violation was one that is "reasonably likely to result in a reasonably serious injury." MSHA, under the current administration, has affirmed the original interpretation in its regulations (30 CFR§100.4) and various court cases. How now does MSHA propose to define "significant and substantial?"

Mr. McAteer: Under the Commission's 1982 interpretation of "significant and substantial," a violation is S&S only if it is reasonably likely to result in a reasonably serious injury. Under the Secretary's interpretation, a violation is S&S if it presents a hazard that has more than a remote or speculative chance of occurring -- that is, if it presents a safety or health hazard that has a realistic possibility of occurring.

MSHA is asserting a different legal interpretation of S&S because a series of cases decided under the 1982 Commission's interpretation has demonstrated that the current interpretation imposes a test which is too narrow and too complicated for determining whether violations

present real threats to miner safety and health. MSHA is concerned that this case law has seriously eroded the statutory intent of S&S, restricting MSHA's ability to protect miners from very real risks of injury, illness, or death.

Mr. Dickey: Will paperwork errors be considered "significant and substantial" under the proposed definition?

No. Paperwork errors would not be considered significant and substantial.

Mr. Dickey: What is the projected additional cost to the mining industry that would be caused by this change? If you don't know, do you plan to find out before changing the definition?

MSHA's civil penalty regulations use the current Commission language (reasonably likely to result in a reasonably serious injury or illness) as a criteria for determining eligibility for the \$50 "single penalty," therefore, absent a change in these regulations, civil penalties would be calculated in the same manner as they are now. Any change to these regulations would have to be accomplished through rulemaking. MSHA's decision to challenge the Commission's definition of S&S is not likely to be resolved through the judicial process for some time. In addition, MSHA has asked for comment from the mining community on the impact of the recent interpretative bulletin in which the Secretary outlined her position on this issue. These comments, including views on penalties, will be considered by the Agency.

## SIGNIFICANT AND SUBSTANTIAL

Ms. Northup: I was surprised to hear of your intention to challenge and overturn a decision of the Federal Mine Safety and Health Review Commission which was issued 16 years ago in the National Gypsum case which defined the conditions under which violations of the Mine Act are considered to be "significant and substantial." Why do you believe this change is necessary after 16 years of use?

Mr. McAteer: MSHA is seeking to ensure that the definition of "significant and substantial" (S&S) violations as applied by the Federal Mine Safety and Health Review Commission (Commission) and MSHA is consistent with the Federal Mine safety and Health Act of 1977 and its legislative intent.

The 1977 Mine Act describes S&S as violations that "could significantly and substantially contribute to the cause and effect of a mine safety or health hazard." The S&S designation is important because safety departments and miners are more likely to treat violations designated as S&S as important to miners' safety and health and hold people accountable for them. MSHA is asserting a different legal interpretation of S&S because a series of cases decided under the 1982 Commission's interpretation has demonstrated that the current interpretation imposes a test which is too narrow and too complicated for determining whether violations present real threats to miner safety and health. MSHA is concerned that this case law has seriously eroded the statutory intent of S&S, restricting MSHA's ability to protect miners from very real risks of injury, illness, or death.

Under the Commission's 1982 interpretation of S&S, a violation is S&S only if it is reasonably likely to result in a reasonably serious injury. Under MSHA's interpretation, a violation is S&S if it presents a hazard that has more than a remote or speculative chance of occurring -- that is, if it presents a safety or health hazard that has a realistic possibility of occurring.

In the Hobet Mining case currently before a Commission trial judge, MSHA has challenged the Commission's 1982 interpretation of what constitutes a "significant and substantial" violation. MSHA advised the mining community of its decision to resolve this matter through test cases in the Federal Register notice submitted on February 5. MSHA has asked for public comment on the implementation and impact on the Agency's interpretation of S&S.

MSHA enforcement personnel will not change current enforcement practices or procedures pending the outcome of the litigation.

Ms. Northup: Shouldn't these types of violations decrease as safety improves?

Mr. McAteer: We would expect the number of S&S violations to decrease as safety improves. Generally, the greater the commitment to safety, the fewer S&S violations are found. MSHA does not measure its performance by the number of S&S violations issued, we are interested in assuring that miners receive the full protections of the Mine Act by ensuring that the definition of S&S violations as applied by the Commission and MSHA is consistent with the Federal Mine Safety and Health Act of 1977 and its legislative intent.

## ENFORCEMENT ACTIVITIES

Ms. Northup: I have heard concerns that many of your policy initiatives have circumvented the normal notice and comment procedures of the Mine Act and the Administrative Procedure Act. Please respond to these concerns by industry.

Mr. McAteer: In American Mining Congress v. MSHA, 995 F.2d 1106 (D.C. Cir. 1993) the Court of Appeals for the D.C. Circuit held that an MSHA policy statement did not have to go through notice and comment rulemaking. That policy was typical of the policy statements published in MSHA's Program Policy Manual. It notified the mining industry that MSHA interpreted its illness reporting regulations as applying to miners who had x-ray readings categorized as 1/0 or greater. Despite the clear statement from the court that rulemaking is not required, MSHA recognizes that public input frequently improves the quality of agency decision making. Therefore, MSHA has adopted a practice of voluntarily publishing significant Program Policy Letters in the Federal Register for public comment before being finalized. In accordance with the public notice of proposed agency action and an opportunity for comment, this voluntary practice goes beyond the requirements of the Mine Act and the Administrative Procedure Act.

The recently published Interpretative Bulletin setting forth the Department's legal position regarding the correct interpretation of the statutory phrase "significant and substantial" arose in the context of taking a legal position in pending litigation and is therefore not a typical policy statement. Nonetheless, in recognition of the mining industry's interest in the S&S issue, MSHA has solicited public comment on the impact of its interpretation.



## METAL/NONMETAL MINES

Ms. Northup: In your budget, you refer to approximately 11,000 metal/nonmetal mines under MSHA jurisdiction. How many of those mines operate more than 250 days a year?

Mr. McAteer: Although MSHA does not track the exact number of days metal/nonmetal mines operate per year, MSHA does classify operating mines as full-time permanent or intermittent. According to our statistics, there were 5,130 full-time permanent mines and 5,855 intermittent mines. A full-time permanent mine is defined as: a mine which operates on a full-time basis, 12 months a year. Temporary closure due to unusual or unforeseen circumstances, such as strikes, mine disasters, temporary maintenance shutdowns, etc., does not change this status. An intermittent mine is defined as: a mine that can reasonably be expected to operate at some time during the year. These operation times will vary due to the demand for a product or seasonal conditions. In the past year, many of the intermittent mines have increased production, due to more optimal weather conditions and increased product demand.

Ms. Northup: How many of those mines employ more than 20 miners?

Mr. McAteer: Of the approximately 11,000 metal/nonmetal mines, 1,775 have an average employment of 20 or more miners.

Ms. Northup: How many are surface mines subject to two inspections per year?

Mr. McAteer: There are 10,812 surface mines that require two complete inspections per year.

Ms. Northup: How long does it take an MSHA inspector to inspect a surface metal/nonmetal mine employing fewer than 20 people?

Mr. McAteer: On average, 14 hours would be required to inspect a surface metal/nonmetal mine employing fewer than 20 people. However, variables such as the number of employees, the complexity of the operations, and whether health sampling is needed must be considered. A small sand and gravel operation with three employees where health sampling is not performed would require less time to inspect than would a larger stone quarry employing 19 miners where health sampling is conducted.

## INSPECTION PROCEDURES

Ms. Northup: What have you done to streamline inspection procedures so that your inspectors can spend more time at those operations where safety is a problem?

Mr. McAteer: MSHA has taken the following steps to streamline inspection procedures to allow inspectors more time at those mines where safety is a problem. By combining certain similar aspects of inspections, duplication has been minimized. MSHA has minimized the paperwork aspects of its inspections, allowing inspectors to spend more time checking for safety hazards at problem mines and spend less time at safe mines filling out unnecessary paperwork. MSHA also continues to expand and improve its laptop computer initiative for inspectors. Inspectors can

access mine specific compliance and accident and injury historical information which is useful to both the inspector and mine operator.

These efforts free additional time for inspectors to place more emphasis on higher risk areas. The FY 1999 request includes 16 FTE and \$1,175,000 for hazard targeting activities, where the agency will identify the underlying causes of persistent safety and health problems and develop appropriate remedies and preventive measures. These additional resources will enhance cooperative efforts with the mining community to improve safety and health conditions in the mines.

MSHA has also undertaken a number of other special emphasis initiatives to address conditions and practices that present hazards to miners. These initiatives include alerts to the mining industry, identification of safe practices, and follow-up inspections. In addition, MSHA has directed attention to the dangers of haulage equipment, and has worked with the mining community to stop accidents.

Accident and injury prevention is an ongoing process that must keep pace with rapidly changing workplace conditions and practices. MSHA will continue to evaluate and develop profiles of accident and injury experience at our Nation's mines, to be able to respond effectively to those circumstances that present the greatest hazards to miners.

#### ABNORMAL WHITE CENTER LITIGATION

Ms. Northup: What is the status of the "abnormal white center" litigation? Two separate decisions have been issued in favor of the industry defendants, yet the agency continues to pursue the litigation. Please explain why this case was not settled when the opportunity rose.

Mr. McAteer: The "abnormal white center" (AWC) litigation is pending before the U.S. Court of Appeals for the District of Columbia Circuit. The appeal has been fully briefed and oral argument is scheduled for April 20, 1998. We believe that the Administrative Law Judge (ALJ) and the Commission made critical errors of law in deciding the case as they did. Among our claims of legal error is our contention that the ALJ never reached the question of what was the most likely cause of the abnormal white centers on the cited dust filters. The case was not settled because the parties could not come to a mutually satisfactory agreement on the terms for settlement.

#### ALLOCATION OF RESOURCES

Ms. Northup: OSHA spends \$2.75 per regulated employee. MSHA spends \$606.00 per regulated employee. Why is there such a disparity?

Mr. McAteer: The FY 1999 budget request for MSHA is a fiscally responsible estimate of what resources are needed to execute the mandates of the Federal Mine Safety and Health Act of 1977 and work toward our FY 1999 performance goals of reducing the rate of fatal accidents and improving miners' health. MSHA is responsible for protecting the safety and health of 336,725 miners working at 13,659 mines throughout the country. To meet these goals and fulfill the

mission of the Mine Act, MSHA must conduct at least four inspections annually at all underground mines and two annually at surface operations. Time spent on an inspection is most affected by the size, complexity, and condition of the mine. At the vast majority of mines, an inspection takes a single inspector less than two days. However at large underground mines, which may have over ten miles of workings, hundreds of pieces of complex equipment, electrical systems comparable to those of a small town, and an environment constantly emitting large volumes of methane gas, a single inspector will spend several weeks or longer inspecting the entire mine.

MSHA also conducts more frequent inspections at those underground mines that liberate excessive quantities of explosive gasses, reviews and approves roof control and ventilation plans, and approves certain mining equipment as safe for use in underground coal mines. In addition, MSHA conducts education, training and compliance assistance activities to help mine operators prevent injuries and illnesses to miners. All of these activities work together and provide miners with essential safety and health protections.

Mining remains among the most hazardous of occupations. Mining has a higher death rate per 100,000 workers than the oil and gas, agriculture, forestry and fishing, and construction industries. The often hazardous and continually changing nature of the mining environment presents a host of safety and health issues. Explosive gases, potentially deadly roof falls, and high voltage electrical equipment create an environment where a safe mine today could be the site of an accident or disaster tomorrow. Frequent irregular inspections of the mines which liberate excessive quantities of explosive gasses are required. Additional programs are implemented to help mines with difficulties in compliance. The issuance of citations and civil penalties is prescribed for violations of safety and health standards and withdrawal or closure orders for unabated violations, depending on the severity of the danger posed. But the bottom line is that the Federal safety and health program mandated by the Mine Act works. The number of fatal accidents has declined dramatically from about 200 annually in the 1970's to less than 100 in 1997.

## SIGNIFICANT AND SUBSTANTIAL

Mr. Obey: Explain why is MSHA seeking to change the definition of “significant and substantial” for addressing mine hazards.

Mr. McAteer: MSHA is seeking to ensure that the definition of “significant and substantial” (S&S) violations as applied by the Federal Mine Safety and Health Review Commission (Commission) and MSHA is consistent with the Federal Mine safety and Health Act of 1977 and its legislative intent.

In a case (Hobet Mining) currently before a Commission trial judge, MSHA has challenged the

Commission's 1982 interpretation of what constitutes a "significant and substantial" violation of the Agency's regulations. MSHA advised the mining community of its decision to resolve this matter through test cases in a Federal Register notice published on February 5. The notice explained the Agency's reasons for the legal challenge and how MSHA interprets S&S. MSHA has asked for public comment on the implementation and impact of the Agency's interpretation of S&S. Although it has been suggested that notice and comment rulemaking is necessary to change the S&S interpretation, we do not agree.

MSHA has specifically instructed its enforcement personnel not to change current enforcement practices or procedures regarding S&S violations, pending the outcome of the litigation.

The 1977 Mine Act describes S&S violations as those that "could significantly and substantially contribute to the cause and effect of a mine safety or health hazard." The S&S designation is important because safety departments and miners are more likely to treat violations designated as S&S as important to miners' safety and health and hold people accountable for them. MSHA is asserting a different legal interpretation of S&S because a series of cases decided under the 1982 Commission interpretation has demonstrated that the current interpretation imposes a test which is too narrow and too complicated for determining whether violations present real threats to miner safety and health. MSHA is concerned that this case law has seriously eroded the statutory intent of S&S, restricting MSHA's ability to protect miners from very real risks of injury, illness, or death.

MSHA's interpretation is meant to address situations similar to those where a driver fails to obey the speed limit in a school zone or where road crews are working. The law imposes special sanctions in such situations not because children or workers are actually hurt, or even because they are likely to be hurt, but because there is a realistic possibility they could be hurt. The law does not wait until children or workers are hurt, or are about to be hurt, before it acts to protect them. The Nation's miners are entitled to the same sort of protection.

Under the Commission's 1982 interpretation of S&S, a violation is S&S only if it is reasonably likely to result in a reasonably serious injury. Under the Secretary's interpretation, a violation is S&S if it presents a hazard that has more than a remote or speculative chance of occurring -- that is, if it presents a safety or health hazard that has a realistic possibility of occurring.

A recent (1997) case S&M Construction, Inc., points up the problem with the Commission's test. In that case, the judge determined that a violation involving six scrapers being driven close to a 22-foot high vertical drop without berms at the edge was not S&S under the Commission's test in part because MSHA did not establish the exact distance between the scrapers and the edge.

Another example is the 1993 case of Consolidation Coal Co. In that case, the judge determined that a violation involving an unguarded 120-volt wire directly above a personnel carrier was not S&S under the Commission's test in part because MSHA did not establish the exact distance between the wire and the equipment operator's hand.

Still another example is the 1993 case of Arenas Matilde, Inc. In that case, the judge determined that a violation involving a loader operator operating a loader without a seat belt was not S&S under the Commission's test because MSHA did not establish the frequency with which the loader operated in unevenly graded areas, the frequency with which the loader's bucket was loaded, and the frequency with which loaders overturned in similar situations.

In the Hobet Mining case pending before the Commission's trial judge, miners at a West Virginia surface coal mine were exposed to a visible cloud of dust which was generated by a highwall drill. MSHA cited the operator with an S&S violation for not controlling the dust which put the miners at risk of developing silicosis, a disabling and sometimes fatal lung disease. The mine operator contested the citation claiming, in part, that under the Commission's test its failure to have effective dust controls was not S&S. MSHA disagrees.

Four experts testified as to the reasonable likelihood that continuation of the unabated violation would result in illness. We think that under the Mine Act there should be no question that Congress intended these types of violations to be considered S&S and be taken seriously by mine operators.